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Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,

Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

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The Appellants are appealing from a decision of a three-judge panel of the United States District Court for the District of Maryland, rendered on March 12, 1975, in which the Court declared Maryland Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §11-1002.2(f)(5), unconstitutional in that the statute denied the equal protection of the laws and constituted an undue burden on interstate commerce. As a result of this conclusion, the Court issued an Order, also dated March 12, 1975, enjoining the Appellants from "giving force and effect in any manner" to certain words appearing in the statute.

Appellants submit this Jurisdictional Statement to demonstrate that this Court has jurisdiction to entertain this appeal, and to show that the questions presented by this appeal are substantial and warrant plenary consideration by this Court.

OPINION BELOW

The opinion of the United States District Court for the District of Maryland is reprinted in the Appendix hereto (A. 1a), as is the Order of the District Court (A. 31a). The District Court's opinion has been reported as *Alexandria Scrap Corp. v. Hughes,* 391 F. Supp. 46 (D. Md. 1975).

JURISDICTION

Plaintiff-Appellee Alexandria Scrap Corporation (Alexandria), a Virginia corporation, instituted this proceeding in the United States District Court for the District of Maryland seeking injunctive and declaratory relief pursuant to 28 U.S.C. §§2281, 2284, 2201, 2202. Named as Defendants, now Appellants, were Harry R. Hughes, Secretary of Transportation, and other officials of the Motor Vehicle Administration of the Maryland Department of Transportation who are charged with administering the statute complained of. The jurisdiction of the District Court was predicated upon 28 U.S.C. §§1331, 1343. Because the Plaintiff alleged the unconstitutionality of a Maryland statute, a three-judge court was convened pursuant to 28 U.S.C. §§2281, 2284.

On March 12, 1975, the District Court issued an Order in which the Maryland statute was declared "invalid in that it denies equal protection of the laws and constitutes an undue burden on interstate commerce." By its Order the District Court enjoined the Defendants-Appellants from restricting the application

of the statute to "scrap processors 'whose plant is physically located and operating in [Maryland].'" On April 25, 1975, the Defendants noted an appeal from that Order by filing a Notice of Appeal in the District Court. This Notice of Appeal is reprinted in the Appendix hereto (A. 32a).

This Court has jurisdiction to review the action taken by the three-judge District Court in this proceeding by virtue of 28 U.S.C. §1253.

The Maryland statute which is under scrutiny is found in Volume 6 of the Annotated Code of Maryland, Maryland Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §11-1002.2(f)(5), and reads as follows:

> (5) Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is otherwise totally inoperable. In those cases only a scrap processor whose plant is physically located and operating in this State shall execute an indemnity agreement that shall be filed with the Motor Vehicle Administration. The indemnity agreement shall contain the name, address and signature of the person delivering the vehicle. The indemnity agreement and the manufacturers serial or identification number shall be satisfactory proof that the vehicle has been destroyed and shall be acceptable for payment of the full bounty authorized by §5-205 if the vehicle identified in the indemnity agreement was titled in

this State. Otherwise, for the purpose of administering the provisions of this section, the provisions of §5-205 shall not apply.

QUESTIONS PRESENTED

I. Does either the Commerce Clause or the Equal Protection Clause of the Constitution of the United States compel the State of Maryland to make, out of State funds, bounty payments to non-Maryland scrap processors in the same manner or to the same extent as such payments are made to Maryland scrap processors?

II. Were the Appellants denied due process of law where material facts were in dispute, and the District Court granted summary judgment in favor of Appellee?

STATEMENT OF THE CASE

Stripped of their intricacies and subtleties, the material facts surrounding this case are relatively simple, although somewhat lengthy. In 1969 the Maryland Legislature enacted a bill to provide, *inter alia,* "for the disposal of abandoned motor vehicles, the licensing of wreckers and scrap processors of motor vehicles, [and] the procedure for notifying the Department of Motor Vehicles of the scrapping, dismantling or destroying of motor vehicles," Laws of Maryland 1969, ch. 556. Although the statutory scheme has been altered since 1969, it has remained essentially the same from 1969 until the present. "[T]he legislation was designed to arrest the increasing accumulation of automobile hulks, and to promote their recycling," *Administrator v. Vogt,* 267 Md. 660, 675, 299 A.2d 1, 9 (1973).

The legislative scheme provides for the licensing of automobile wreckers and scrap processors,[1] the payment by wreckers — but *not* scrap processors — of a semi-annual assessment for retaining possession of automobile hulks ten model years or older which have been in their possession for more than one year[2], and the payment by the State of Maryland to wreckers and scrap processors of a bounty for the destruction of certain vehicles formerly titled in Maryland[3].

From the enactment of the original legislation until July 1, 1974, there were basically four methods by which licensed wreckers and scrap processors could lawfully obtain vehicles which, upon their destruction, would entitle the wreckers and scrap processors to bounty payments from the State of Maryland. Such vehicles could be received from: 1. A vehicle owner possessing a valid certificate of title;[4] 2. A Maryland

[1] Maryland Code (1957, 1970 Repl. Vol.) Art. 66½, §5-201.

[2] Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §5-203(d). The age of vehicles which are subject to assessment has changed over the years. *See* note 18 *infra.*

[3] Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §5-205. In very limited circumstances Maryland will pay a bounty for the destruction of automobiles which have never been titled in the State. These instances arise where a police department disposes of a vehicle which was abandoned within a political subdivision. In these cases the State will pay a bounty to the appropriate county or Baltimore City. Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §§5-205, 11-1002.2(d).

[4] Code (1957, 1970 Repl. Vol.) Art. 66½, §5-203.1. This section governs the conveyance of title to a wrecker or scrap processor. This can be accomplished either by a vehicle owner delivering the certificate of title to the wrecker or scrapper, or by anyone holding an assigned certificate of title who endorses a reassignment and warranty of that title when transferring the vehicle in question to a wrecker or scrap processor. The latter method is usually employed by wreckers when delivering hulks to scrappers, and the document executed by the wrecker is commonly referred to as a Wrecker's Certificate, which is a form issued by the Maryland Motor Vehicle Administration.

police department, after the public auction of the vehicle;[5] 3. Anyone in possession of a valid police certificate of authority to sell the vehicle;[6] and 4. Virtually anyone, without any documentation, in the case of a vehicle eight years of age or older which had no engine or was otherwise totally inoperable.[7]

Since 1970 the Appellee, although a Virginia corporation with its principal place of business in Alexandria, Virginia, has been licensed as a scrap processor by the State of Maryland, and has participated in Maryland's bounty program. In fact, from July 1, 1970, through September 30, 1974, Alexandria received $219,084.00 in bounty payments from the State of Maryland, which represented 13.7% of the total of bounty payments received by all wreckers and scrappers during that period (Stipulation of Facts ¶13, which may be found in the record).

During its 1974 session the Maryland Legislature amended the existing bounty scheme. As a result of the passage of House Bill 782, Laws of Maryland 1974, ch. 465,[8] as of July 1, 1974, those scrap processors with a plant "physically located and operating in" Maryland were eligible to receive bounty payments for vehicles eight years of age and older which had no engine or were otherwise totally inoperable, if the acquisition of the vehicle was documented by an indemnity agreement, and the agreement was filed with the Motor

[5] Code (1957, 1970 Repl. Vol.) Art. 66½, §11-1002.2(a).

[6] Code (1957, 1970 Repl. Vol.) Art. 66½, §11-1002.2(f)(1-4).

[7] Code (1957, 1970 Repl. Vol.) Art. 66½, §11-1002.2(f)(5).

[8] Now codified as Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §11-1002.2(f)(5).

Vehicle Administration as a prerequisite to payment.[9] Non-Maryland scrap processors, including Alexandria, were not eligible to receive bounty payments for these vehicles through the execution of an indemnity agreement. These non-Maryland scrappers could receive bounty payments for such eight year old vehicles if they received the vehicles by one of the other three methods, but they could not do so by filing indemnity agreements.

Because the acquisition of these eight year old vehicles had been the easiest and most lucrative method by which Alexandria had participated in the bounty program, Alexandria asserted that the 1974 legislation caused its primary source of bounty revenue to evaporate.[10] Alexandria averred that during the three months prior to July 1, 1974 (April, May, and June, 1974), it had acquired 1,879 vehicles for the destruction of which it had received $30,064.00 in bounty payments. For the next three months (July, August, and September, 1974) after the amending legislation became effective, Alexandria acquired only 27 vehicles which resulted in the collection of $432.00 (Affidavit of Isadore Gittleson ¶13, which may be found in the record).

[9] By the execution of an indemnity agreement, the person delivering the eight year old vehicle indemnified the scrap processor to whom the vehicle was delivered from all claims which might be brought against the scrapper upon the destruction of the vehicle. Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §11-1002.2(f)(5).

[10] It must be noted that eight year old vehicles which were delivered by wreckers did not have to be accompanied by indemnity agreements. The Pennsylvania scrap processors participating in the Maryland program used Wreckers' Certificates instead of indemnity agreements. *See* note 4 *supra*. The use of these Wreckers' Certificates is in no way restricted to use by Maryland based scrap processors.

Believing that the amended bounty scheme imposed a burden upon its ability to collect bounties, Alexandria instituted suit in the United States District Court for the District of Maryland praying that a declaratory judgment be entered decreeing Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §11-1002.2(f)(5), unconstitutional as being repugnant to the Commerce Clause and the Equal Protection clause of the fourteenth amendment to the United States Constitution, and further praying that Appellants be enjoined from enforcing or administering said statute. Alexandria had also requested that a three-judge court be convened to decide the case, and such a court was designated by The Honorable Clement F. Haynsworth, Chief Judge, Fourth Judicial Circuit. After receipt of Alexandria's Complaint, Appellants filed a Motion to Dismiss.

The cause was heard on February 14, 1975, and on March 12, 1975, the Court handed down its opinion and order. The District Court granted summary judgment for Alexandria, found the Maryland statute to be violative of the Commerce Clause and the Equal Protection Clause of the Constitution of the United States, and enjoined Appellants from giving any force or effect to the words "whose plant is physically located and operating in this State," as they appeared in the statute. This ruling has the effect of allowing non-Maryland scrap processors to obtain inoperable eight year old vehicles which are eligible for bounty payments by filing indemnity agreements. Appellants filed their Notice of Appeal of the District Court's decision on April 25, 1975.

THE QUESTIONS PRESENTED BY THIS APPEAL ARE SUBSTANTIAL AND REQUIRE THE PLENARY CONSIDERATION OF THIS COURT.

Appellants contend that the District Court made numerous errors of law in granting summary judgment for Alexandria. These errors were the result of improper and unprecedented interpretations of prior decisions of this Court, and of the Federal Rules of Civil Procedure promulgated by this Court. By striking down a State statute as unconstitutional, the District Court exercised the ultimate federal judicial power in this case. Because of the Constitutional magnitude of the questions presented by this appeal, the plenary consideration of this Court is required to review the action taken by the District Court.

I.

NEITHER THE COMMERCE CLAUSE NOR THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION OF THE UNITED STATES COMPEL THE STATE OF MARYLAND TO MAKE, OUT OF STATE FUNDS, BOUNTY PAYMENTS TO NON-MARYLAND SCRAP PROCESSORS IN THE SAME MANNER OR TO THE SAME EXTENT AS SUCH PAYMENTS ARE MADE TO MARYLAND SCRAP PROCESSORS.

During its 1967 session the Maryland Legislature requested the Committee on Taxation and Fiscal Matters of the Maryland Legislative Council to review the growing problem presented by the accumulation of abandoned and discarded motion vehicles, and to propose legislation to effect a solution to this problem.[11] The Committee reported that "'[r]estoring the scrap cycle seems to be the only logical means to rid the countryside of worn-out, rusting automobile hulks,'"

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[11] The Legislature's request was made in the form of Senate Joint Resolution 57, Laws of Maryland 1967.

and that "the core of the problem was to find ways to speed up the so-called 'scrap cycle.'"[12]

> From the evidence presented to the Committee, the objective would seem to be to accelerate the movement of the vehicle from the owner who has decided to discard it, to the auto wrecker who salvages parts and markets the hulk, to the scrap processor who reduces it to scrap marketable at the mills, and finally to the steel mills which convert it into new usable steel.[13]

The Committee went on to say that the optimal movement of discarded vehicles most often bogs down at the wrecker's automobile junkyard. This bottleneck develops because the most profitable part of a wrecker's operation is the sale of usable parts. Because a wrecker's profit margin in the sale of hulks to a scrap processor is so small, any obstruction tends to retard the movement of these vehicles.[14] Some of these obstructions to the free flow of automobile hulks resulted from technological advances in the steel industry which had reduced the market for the kind of scrap that comes from discarded motor vehicles, and the fact that motor vehicle titling laws, and other legal technicalities, frequently cause wreckers to hesitate handling abandoned vehicles.[15]

The Committee recognized that it actually had to address two problems: 1. abandoned motor vehicles, and 2. the accumulation of motor vehicles in junkyards.

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[12] Maryland Legislative Council Committee on Taxation and Fiscal Matters 1967 Report 60. A portion of this Report may be found in the record as Appendix III to Defendants' Motion to Dismiss.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 60-61.

Owners of worn-out vehicles often abandoned them because it was cheaper and easier than delivering them to an auto wrecker. Wreckers tended to accumulate large numbers of abandoned vehicles in unsightly junkyards because it was a simple means of maintaining inventories of profitable parts, and because there was little, if any, financial inducement to remove the vehicles to a scrap processor.[16]

Remedial legislation was proposed as a means of tackling the problem. The Committee concluded that auto wreckers play a vital role in the disposal of discarded motor vehicles, and that they should be encouraged to handle as many of these vehicles as possible. However, it was felt that wreckers must also be persuaded to move these vehicles into the scrap cycle as soon as practicable after salvaging usable parts.[17]

During its 1969 session the Maryland Legislature endeavored to act upon the Committee's recommendations, and addressed the problem of the proliferation of automobile junkyards by enacting Senate Bill 30, Laws of Maryland 1969, ch. 556. The resulting legislative scheme has been described in the Statement of the Case *supra*.

The rationale underlying the scheme is relatively straight forward. In order to arrest the accumulation of abandoned autos in wreckers' junkyards, wreckers are required to be licensed and are assessed $5.00 every six months for each vehicle beyond a certain age which

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[16] *Id.* at 61.

[17] *Id.* at 62.

they retain for over one year.[18] No penalty is assessed for 18 months after acquisition of a vehicle — one year plus the first six month period — in order to give the wreckers a reasonable amount of time to remove spare parts from the vehicles.[19] Wreckers are motivated to deliver abandoned vehicles to scrap processors for destruction through the implementation of a bounty program. Under this program, the State of Maryland pays a bounty of $16.00 for the destruction of an abandoned vehicle by a scrap processor: $8.00 of this fee is paid to the scrap processor, and the other $8.00 is paid to the wrecker who delivered the vehicle to the scrapper.[20] In effect, the Maryland bounty program creates an artificial value for automobile hulks which encourages their expeditious delivery to scrap processors. "The purpose of the law . . . was to halt the growth of [the problems developing from the storage of old automobiles] and to induce recycling of vehicles which had fallen into disuse," *Administrator v. Vogt, supra,* 267 Md. at 670, 299 A.2d at 6.

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[18] At the time of its original enactment the statute provided for the assessment of such vehicles seven model years or older, Code (1957, 1970 Repl. Vol.) Art. 66½, §5-203(d). In 1972 the statute was amended to impose assessments on vehicles ten model years or older, Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §5-203(d). Penalties are assessed only with respect to older vehicles because such vehicles have minimal value as sources of replacement parts.

[19] The accumulation of discarded vehicles was further discouraged by making it a misdemeanor for a wrecker to store more than 250 vehicles per acre, Code (1957, 1970 Repl. Vol.) Art. 66½, §§5-208, 5-210.

[20] Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §5-205. At the inception of the program the bounty payment was in the sum of $10.00, divided evenly between wrecker and scrapper, Code (1957, 1970 Repl. Vol.) Art. 66½, §5-205. In 1972 the bounty was raised to $12.00, and in 1973 it was increased to the current $16.00 figure.

Alexandria, although a Virginia corporation, has participated in Maryland's bounty program as a licensed scrap processor since 1970. When the Maryland Legislature amended the law in 1974, only scrap processors with plants physically located and operating in Maryland were permitted to obtain inoperable eight year old vehicles, upon which bounties would be paid, if an indemnity agreement was executed in favor of the scrapper.[21] The presentation of this agreement, along with the Vehicle Identification Number, to the Motor Vehicle Administration, constitute proof that the vehicle has been destroyed, and the bounty payment is made.

A. *Commerce Clause*[22]

Article I, section 8, clause 3 of the Constitution, commonly known as the Commerce Clause, provides that the Congress shall have the power to regulate commerce among the several States. Generally speaking, this provision has been interpreted as prohibiting the States from placing non-incidental burdens upon interstate commerce. Under the Maryland bounty program, non-Maryland scrappers, including Alexandria, may not obtain bounties by the execution of idemnity agreements, although all other methods are available to them. In the District Court Alexandria

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[21] Of course, non-Maryland scrappers may still receive bounties on these vehicles as long as they are documented in some permissible fashion other than by indemnity agreement.

[22] Because the issues presented by this appeal are closely related and often intertwined, some of the discussion contained in the treatment of the Commerce Clause aspect of the case bears upon the Equal Protection Clause analysis, as does a measure of the material presented under Question II. *infra.*

successfully contended that this difference in the means by which scrappers may obtain vehicles eligible for bounty payments violated the Constitution of the United States.

Alexandria's complaint boils down to this. Prior to the enactment of the Maryland bounty scheme, all scrap processors were experiencing financial difficulties because of the depressed state of the scrap industry. After the implementation of the 1969 legislation, all licensed scrap processors, those within Maryland and those located near the Maryland border in contiguous States, realized a most welcome increase in revenues. When the 1974 amendment altered the scheme, in a way which, Alexandria contends, caused it to suffer a loss in receipts, Alexandria felt aggrieved.

In essence, assuming *arguendo* that Alexandria's contention concerning the effect of the 1974 amendment is accurate, until mid-1974, Alexandria had been riding the Maryland gravy train. Maryland is the only State in the United States which has such a bounty program, or any similar arrangement. Neither Alexandria, nor any of the other licensed non-Maryland scrap processors, pay any Maryland taxes. Neither is Alexandria registered to do business in Maryland with the Maryland Department of Assessments and Taxation, and, in fact, does not engage in any business within the State of Maryland. *See* Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss 79, which may be found in the record. Despite this, from the inception of the program through mid-1974, the State of Maryland was willing to liberally extend the benefits of the bounty program to non-Marylanders, presumably because the goals of the program could be best achieved if a maximum number of business enterprises participated. In 1974 the Legislature restricted the means by which non-Marylanders could take advantage of Maryland's generosity. Certainly it cannot be said that any scrap processor in the United States has a constitutional right to receive price-supportive bounty payments for scrapped motor vehicles. The validity of Alexandria's argument hinges upon implicit acknowledgment of the existence of a constitutional right to these payments on Alexandria's part. Whatever Alexandria receives through Maryland's munificence cannot be regarded as anything but a fortuitous occurrence from Alexandria's viewpoint. Merely because Alexandria finds itself in a less advantageous position after a change in the law has been effected does not mean that the Constitution has been breached.

Surely such a state of affairs cannot be said to offend the Commerce Clause, for whether any State law violates that Clause depends upon whether the statute in question places an undue burden on interstate commerce: not whether an individual business enterprise earns less income than it did before the enactment of a law. Appellants maintain that the bounty program actually *promotes* interstate commerce, and places absolutely no burden upon it.[23]

The District Court's analyses of the Commerce Clause, and the cases decided thereunder by this Court, are simply upsidedown. State statutes which have been held unconstitutional as violative of the Commerce Clause have all had one feature in common: they have *prohibited* some form or facet of interstate commerce, either by precluding such commerce outright, or by placing such a heavy burden upon some aspect of commerce that, in effect, it could not be conducted.

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[23] *See* pages 33-34, *infra*.

In *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S. Ct. 844 (1970), an order issued by an Arizona official which *prohibited* a California concern from transporting uncrated cantaloupes from Arizona to California was found to place an unlawful burden on interstate commerce. The Maryland bounty program imposes absolutely no prohibitions upon the interstate transportation of automobile hulks.

Polar Ice Cream & Creamery Co. v. Andrews, 375 U.S. 361, 84 S. Ct. 378 (1964), presented a situation where this Court considered a Florida law which *prohibited* Florida milk distributors from purchasing milk from non-Florida milk producers. This *"exclusion* of foreign milk from a major portion of the Florida market," was held to violate the Commerce Clause, *id.* at 377, 84 S. Ct. at 387 (emphasis supplied). The Maryland bounty statute neither prohibits nor excludes the importation or exportation of automobile hulks into or out of the State of Maryland.

In *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 71 S. Ct. 295 (1951), a city ordinance *prohibiting* the sale of pasteurized milk not processed and bottled within a five mile radius of the city was declared unconstitutional by this Court because the ordinance *excluded* milk which was produced in Illinois from distribution in Madison, Wisconsin. The Maryland law under review does not prohibit or impede the interstate movement of any commodity.

In *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 69 S. Ct. 657 (1949), a New York law which *forbade* a milk dealer to buy from producers unless licensed to do so was struck down as violating the Commerce Clause as it was applied. The Maryland law does not forbid any scrap processor from doing business within the State. Scrappers must be licensed in order to obtain

bounty payments, but the ability to receive bounty payments has nothing to do with the fundamental right of doing business.

The case of *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156 (1948), presented an extraordinary situation where a South Carolina statute required non-residents to pay a fee one hundred times as great as that paid by residents for each shrimp boat utilized within South Carolina's three mile maritime belt for the purpose of catching shrimp. Another South Carolina law required all boats licensed to trawl for shrimp in State waters to "dock at a South Carolina port and unload, pack, and stamp their catch 'before shipping or transporting it to another State,'" *id.* at 390-91, 68 S. Ct. at 1159. This Court found that the statute which made it unlawful to unload shrimp anywhere but a South Carolina port was "inimical to the commerce clause," *id.* at 406, 68 S. Ct. at 1167.[24] Maryland's bounty program imposes the same license fee upon all scrap processors, and does not forbid the removal of automobile hulks from the State in any manner.

The constitutionality of a portion of New York's Milk Control Act was placed before this Court in *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 55 S. Ct. 497 (1935). A segment of the Act provided for a system of minimum prices to be paid by milk dealers to producers. Conflict arose when a New York dealer purchased milk from a Vermont distributor at prices below the New York scale. At issue was whether New York could *prohibit*, within

[24] The foremost constitutional infirmity in *Toomer* was an impingement of the Privileges and Immunities Clause of the Constitution, U.S. Const. art. IV, §2. No such violation can be present in this case because Appellee is a corporation, and corporations are not within the protection of the Privileges and Immunities Clause, Asbury Hosp. v. Cass County, 326 U.S. 207, 210-11, 66 S. Ct. 61, 63 (1945).

its borders, the sale of milk bought outside the State unless the price paid to the producers would have been lawful upon a like transaction within New York. Writing for a unanimous Court, Mr. Justice Cardozo stated that "commerce between the states if burdened unduly when one state regulates by indirection the prices to be paid to producers in another," *id.* at 524, 55 S. Ct. at 501. Consequently, the New York statute was declared invalid. Maryland's law does not purport to prohibit the sale of scrapped cars under any circumstances, in any State, at any price.

In *Foster-Fountain Packing Co. v. Haydel,* 278 U.S. 1, 49 S. Ct. 1 (1928), the State of Louisiana had, by statute, *forbidden* the exportation of shrimp from the State from which the heads and hulls had not been removed. Because this law directly obstructed and burdened interstate commerce, it could not withstand constitutional scrutiny. The closely related Louisiana Oyster Act met a similar fate in *Johnson v. Haydel,* 278 U.S. 16, 49 S. Ct. 6 (1928), for identical reasons. Maryland's bounty scheme does not regulate the exportation or importation of automobile scrap in any fashion.

Similarly, in *Pennsylvania v. West Virginia,* 262 U.S. 553, 43 S. Ct. 658 (1923), this Court foiled an attempt by the State of West Virginia "to *compel* the retention within the state of whatever gas may be required to meet the local needs for all purposes," *id.* at 594, 43 S. Ct. at 664 (emphasis supplied). Maryland is not attempting to compel the retention of scrap metal within her borders. On the contrary Maryland is trying to put as much scrap into the stream of interstate commerce as her limited resources will allow.

Through the enactment of the bounty program, Maryland has not endeavored to "place itself in a

position of economic isolation," and the operation of the bounty statutes have not placed "an unreasonable clog upon the mobility of commerce," *Baldwin v. G.A.F. Seelig, Inc., supra,* 294 U.S. at 527, 55 S. Ct. at 502. No prohibitions or restrictions of any sort are imposed on the interstate movement of scrap metal or automobile hulks. In fact, the Maryland scheme furthers interstate commerce. More scrap metal has undoubtedly been placed in interstate commerce since the inauguration of Maryland's program than there had been prior to its implementation. Indeed, this results from the achievement of one of the aims of the legislation.

Alexandria's complaint is really that its bounty receipts have not increased by as much as it would have liked. Appellants do not believe that such a grievance may be remedied by recourse to the Commerce Clause. For even if the bounty program indirectly affects interstate commerce, such a tenuous connection does not do violence to the Constitution, *Milk Control Board v. Eisenberg Farm Prods.,* 306 U.S. 346, 351, 59 S. Ct. 528, 530 (1939). The Commerce Clause is not offended by a State statute "which affects interstate commerce only incidentally and remotely," *Shafer v. Farmers' Grain Co.,* 268 U.S. 189, 199, 45 S. Ct. 481, 485 (1925). Certainly that Clause is not disturbed by a statutory scheme which promotes commerce among the States.

B. *Equal Protection Clause*

The District Court ruled that the Maryland statute violated the Equal Protection Clause of the fourteenth amendment because it "creates a classification which has no basis in reason" (opinion of the District Court A.22a). Appellants urge that this ruling was clearly erroneous because the Equal Protection Clause is inapplicable to the case at bar.

The Equal Protection Clause provides, in part, that no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person *within its jurisdiction* the equal protection of the laws," U.S. Const. amend. XIV, §1 (emphasis supplied). Appellee is a corporation organized under the laws of Virginia, and maintains its scrap processing facilities in Alexandria, Virginia (Stipulation of Facts ¶¶ 1, 4, which may be found in the record). Simply stated, Alexandria, being a Virginian not within Maryland, is not entitled to the equal protection of Maryland's laws.

> [T]he Virginia corporation cannot rely upon the clause declaring that no state shall 'deny to any person within its jurisdiction the equal protection of the laws.' That prohibition manifestly relates only to the denial by the state of equal protection to persons 'within its jurisdiction.' . . . The Court cannot assume that those words were inserted without any object, nor is it at liberty to eliminate them from the constitution, and to interpret the clause in question as if they were not to be found in that instrument.

Blake v. McClung, 172 U.S. 239, 260-61, 19 S. Ct. 165, 173 (1898) (Harlan, J.); *see also Sully v. American Nat'l Bank,* 178 U.S. 289, 20 S. Ct. 935 (1900). "Manifestly, the obligation of the State to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction," *Missouri v. Canada,* 305 U.S. 337, 350, 59 S. Ct. 232, 236 (1938). *See also Township of River Vale v. Town of Orangetown,* 403 F.2d 684, 687 (2d Cir. 1968).

Although it is, admittedly, a point not often litigated, the "within its jurisdiction" language contained in the fourteenth amendment poses an absolute bar to Alexandria's equal protection argument. That this

phrase retains operative force today cannot be doubted. *See Graham v. Richardson,* 403 U.S. 365, 371, 91 S. Ct. 1848, 1851 (1971) ("[T]he term 'person' . . . entitles both citizens and aliens to the equal protection *of the laws of the State in which they reside.*" [emphasis supplied]).

Even if this was the typical equal protection situation, where the complainant was entitled to the equal protection of the laws, the District Court's application of fourteenth amendment principles in this case was incorrect. In the proper case, when the constitutionality of a validly enacted State statute is questioned, the starting point for the resolution of the issue is always the same: the State law is presumed to be constitutional, *Lehnhausen v. Lake Shore Auto Parts Co.,* 410 U.S. 356, 364, 93 S. Ct. 1001, 1006 (1973); *Davis v. Department of Labor & Indus.,* 317 U.S. 249, 257, 63 S. Ct. 225, 229 (1942). An assailant attempting to overcome this presumption undertakes a most difficult chore. He must successfully " 'negative every conceivable basis which might support' " the legislative arrangement, as well as explicitly demonstrate that a classification created by the statute " 'is a hostile and oppressive discrimination against particular persons,' " *Lehnhausen v. Lake Shore Auto Parts Co., supra.*

The criteria by which an allegation of constitutional infirmity encompassing the denial of the equal protection of the laws must be tested have been settled for many years. These rules are:

> 1. The equal-protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some

> reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classfication in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.

Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79, 31 S. Ct. 337, 340 (1911). This Court has repeatedly recognized the continuing validity of these propositions since their original statement in 1911, *see, e.g., Graham v. Richardson, supra,* 403 U.S. at 371, 91 S. Ct. at 1852; *Dandridge v. Williams,* 397 U.S. 471, 485-87, 90 S. Ct. 1153, 1161-62 (1970); *McGowan v. Maryland,* 366 U.S. 420, 426, 81 S. Ct. 1101, 1105 (1961); *Morey v. Doud,* 354 U.S. 457, 463-64, 77 S. Ct. 1344, 1349 (1957); *Rast v. Van Deman & Lewis Co.*, 240 U.S. 342, 357, 36 S. Ct. 370, 374 (1916).

In 1969 the Maryland Legislature perceived that the accumulation of abandoned automobiles presented a problem of statewide proportion. Consequently, a bounty program was enacted as a major part of a larger scheme "designed to arrest the increasing accumulation of automobile hulks, and to promote their recycling," *Administrator v. Vogt, supra,* 267 Md. at 675, 299 A.2d at 9. Perhaps the legislation is not perfect, and perhaps a different form of legislation would provide a more complete solution to the problem which the Legislature sought to remedy. However, the fact that a legislative scheme is imperfect does not lead to the conclusion that it denies the equal protection of the laws.

"[T]he Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all," *Dandridge v. Williams, supra,* 397 U.S. at 486-87, 90 S. Ct. at 1162; *Williamson v. Lee Optical of Oklahoma,* 348 U.S. 483, 489, 75 S. Ct. 461, 465 (1955). "[A] state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose," *Nebbia v. New York,* 291 U.S. 502, 537, 54 S. Ct. 505, 516 (1934). That the constitutional limits within which State legislatures are free to act are quite broad was emphasized in *Ferguson v. Skrupa,* 372 U.S. 726, 730-31, 83 S. Ct. 1028, 1031 (1963), where Mr. Justice Black wrote the opinion for a unanimous Court:

> We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws. As this Court stated in a unanimous opinion in 1941, 'We are not concerned . . . with the wisdom, need, or appropriateness of the legislation.' Legislative bodies have broad scope to experiment with economic problems, and this Court does not sit to 'subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.' It is now settled that States 'have power to legislate against what are found to be injurious practices in their internal commercial affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law.' [Footnotes omitted.]

Appellants maintain that Alexandria does not have a constitutional right to participate in Maryland's bounty

program under *any* circumstances. However, that is not necessarily an issue presented by this case, for the effect of the Maryland law as amended is merely to limit the *means* by which scrap processors who do not operate plants located in Maryland may obtain hulks eligible for bounty payments. Only the indemnity agreement avenue is closed to non-Maryland scrappers. Other methods of acquisition remain available for use by all scrappers. Furthermore, the law places no limit of any kind upon the amount of payments which *any* scrapper may receive under the program.

Alexandria not only asserts that it has a right to participate in Maryland's program, but also claims that it can do so on its own terms. In fact, it is the State of Maryland which is distributing the benefits involved, and which has broad latitude to determine the extent, and the recipients, of the bounties, as well as the means by which the payments will be made.

With respect to satisfying the Equal Protection Clause, if indeed that Clause was applicable, the means by which Maryland's law differentiates between Maryland and non-Maryland scrap processors, need only be "rationally based and free from invidious discrimination," *Dandridge v. Williams, supra,* 397 U.S. at 487, 90 S. Ct. at 1162. As long as its "judgments are rational, and not invidious," the Maryland Legislature's efforts to tackle the problem posed by the accumulation of automobile hulks "are not subject to a constitutional straightjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them," *Jefferson v. Hackney,* 406 U.S. 535, 546-47, 92 S. Ct. 1724, 1731 (1972).

"A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to

justify it," *McGowan v. Maryland, supra,* 366 U.S. at 426, 81 S. Ct. at 1105; *Dandridge v. Williams, supra,* 397 U.S. at 485, 90 S. Ct. at 1161. Many logical reasons exist for the distinction in the Maryland law. By not allowing non-Maryland scrappers to acquire autos by executing an indemnity agreement at least four purposes are achieved: 1. It tends to insure that bounty recipients are amenable to judicial process in Maryland; 2. It insures that the indemnity agreement is enforceable; 3. It tends to insure that bounty payments will only be made on autos abandoned in Maryland; and, 4. It tends to limit the amount of money which the State obligates itself to pay out of its limited resources to non-taxpayers.

These reasons may not be exhaustive, nor may they be logically perfect. However, they are certainly sufficient to pass muster under the Equal Protection Clause. All the reasons which the State might advance in justification of the statutory distinction need not be explored, so long as a "solid foundation" for the law "can be found in the State's legitimate interest in encouraging" the removal of abandoned automobiles from its highways and junkyards, *Dandridge v. Williams, supra,* 397 U.S. at 486, 90 S. Ct. at 1162. Nothing in the Constitution requires the State of Maryland "to subordinate or compromise its legitimate interests solely to create a more comprehensive" bounty program than it already has, *Geduldig v. Aiello,* 417 U.S. 484, 496, 94 S. Ct. 2485, 2491 (1974).

The other hurdle which the Maryland statute must clear in order to satisfy equal protection guarantees is that it not discriminate invidiously. "The prohibition of the Equal Protection Clause goes no further than the invidious discrimination," *Williamson v. Lee Optical of Oklahoma, supra,* 348 U.S. at 489, 75 S. Ct. at 465,

because "it is only 'invidious discrimination' which offends the Constitution," *Ferguson v. Skrupa, supra,* 372 U.S. at 732, 83 S. Ct. at 1032.

A limitation upon one's ability to secure bounty payments for destroying junked automobiles to as great an extent as that possessed by another is certainly not a deprivation of any fundamental right, and has never been deemed an "invidious discrimination." Examples of such improper discriminations were set forth in *Village of Belle Terre v. Boraas,* 416 U.S. 1, 7, 94 S. Ct. 1536, 1540 (1974), and include: the right to travel, the right to vote, the right of association, the right of access to the courts, and rights of privacy. Other impermissible classifications are those based on alienage, nationality, and race, *Graham v. Richardson, supra,* 403 U.S. at 372, 91 S. Ct. at 1852. None of these classifications or fundamental rights are involved in this case.

Alexandria does not have a constitutional right to participate in Maryland's bounty scheme. To the extent that it does participate it does so only to the degree which the Maryland Legislature has provided by statute. This is particularly true here where the Legislature has not limited the extent of Alexandria's participation in the program, but only the means by which it may partake of the benefits. In fact, Alexandria can only benefit from the present statutory scheme: it is not subject to any of the non-bounty aspects of the Maryland program which are enforced by the imposition of various sanctions. The State of Maryland certainly could not enforce an assessment against a non-Maryland concern for retaining old vehicles for more than eighteen months. Nor could it charge a Virginian with a misdemeanor for storing too many cars within a defined area in Virginia.[25] Surely

[25] See notes 18 and 19 *supra* and accompanying text.

Maryland "has no power to project its legislation into" Virginia, or any other State, *Baldwin v. G.A.F. Seelig, Inc., supra,* 294 U.S. at 521, 55 S. Ct. at 499. "[N]o State can exercise direct jurisdiction and authority over persons or property without its territory," and "the laws of one State have no operation outside of its territory, except so far as is allowed by comity," *Pennoyer v. Neff,* 95 U.S. 714, 722 (1877). Therefore, Maryland has no obligation under the Equal Protection Clause to extend the benefits of its legislation to non-Marylanders for the same reason that it may not enforce any obligations imposed by its laws beyond its jurisdiction.

This is not a case such as *Morey v. Doud, supra,* 354 U.S. at 467, 77 S. Ct. at 1351, where a State has singled out one of its residents for, when compared with other residents of the same class, special treatment. As was the case in *Dandridge v. Williams, supra,* 397 U.S. at 479, 90 S. Ct. at 1159, Maryland has finite resources, and an obvious interest in distributing the available resources in the manner in which she perceives the most benefit will be derived, *Geduldig v. Aiello, supra,* 417 U.S. at 496, 94 S. Ct. at 2491. Whether or not one agrees with Maryland's determination of how these resources should be distributed, "there is nothing in the Constitution that forbids it," *Jefferson v. Hackney, supra,* 406 U.S. at 549, 92 S. Ct. at 1733.

Alexandria does not have a cognizable constitutional claim solely by virtue of the fact that it might not be making as much money now as it was at some time in the past. "The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases," *Nebbia v. New York, supra,* 291 U.S. at 527-28, 54 S. Ct. at 512. Nor does the fourteenth amendment "protect a business against the hazards of competition," *Hegeman Farms Corp. v.*

Baldwin, 293 U.S. 163, 170, 55 S. Ct. 7, 9 (1934). The Constitution would even permit the State of Maryland to enter into the scrapping business and thereby directly compete with private proprietors, *Nebbia v. New York, supra,* 291 U.S. at 529-30, 54 S. Ct. at 513.

If Alexandria believes that price supportive bounty payments are essential to its survival, its proper redress is not to be found with the courts, but rather with the legislature — and the appropriate legislature in this case is that sitting in Richmond, Virginia, and not that body which deliberates in Annapolis, Maryland. *See Baldwin v. G.A.F. Seelig, Inc., supra,* 294 U.S. at 524, 55 S. Ct. at 501. Virginia is more than four times as large as Maryland, and is populated by over 20% more people, 1975 Information Please Almanac 633, 644, 699 (1974). Surely the Commonwealth of Virginia is in a position to establish its own bounty program if it so desires, and her citizens need not depend upon the treasuries of other States for sustenance. It is that Commonwealth, from which Alexandria derives its existence, to which it presumably pays its taxes, and under whose laws it is entitled to equal treatment, which is in the position to provide the relief which Alexandria would have.

II.

APPELLANTS WERE DENIED DUE PROCESS OF LAW BECAUSE MATERIAL FACTS WERE IN DISPUTE AND THE DISTRICT COURT GRANTED SUMMARY JUDGMENT IN FAVOR OF APPELLEE.

Although Appellants believe that, as a matter of law, Alexandria may not successfully press its constitutional claims, the unusual procedural handling of this case by the District Court also deserves this Court's attention. It is Appellant's position that the grant of summary judgment for Alexandria was improper, and resulted

from an abuse of the Federal Rules of Civil Procedure. This, in turn, led the Court to apply improper standards in the course of determining the merits of the controversy.

Prior to the designation of the three-judge court the single Judge to whom the case was originally assigned requested that the parties submit affidavits concerning the facts in the case in order that the need for an evidentiary hearing could be obviated. Pursuant to the Judge's request, Alexandria submitted an affidavit of Isadore Gittleson, Alexandria's General Manager and Assistant Treasurer. Shortly thereafter, the State of Maryland filed the affidavit of Thomas E. Harris, Chief of the Licensing and Consumer Services Division of the Motor Vehicle Administration of the Maryland Department of Transportation.[26] Mr. Harris administers Maryland's bounty program.

In the course of attempting to demonstrate how Alexandria was adversely affected by the 1974 Maryland legislation, Mr. Gittleson made numerous allegations concerning the number of automobile hulks for which Alexandria claimed bounties. Mr. Gittleson explained the method by which Alexandria tabulated the figures on hulks received under an indemnity agreement: "Those indemnity agreements submitted for a bounty payment to the Maryland Motor Vehicle Administration, and accounted for on the data processing printout received monthly from that Administration, were all deemed to have been submitted for vehicles coming from Maryland, since *no such agreement is submitted to the Motor Vehicle Administration unless the tower executing it is known to customarily haul from Maryland,*" Gittleson Affidavit ¶5 (emphasis supplied).

[26] The Affidavit of Thomas E. Harris may be found in the record.

In his affidavit Mr. Harris noted that the Motor Vehicle Administration (MVA) operated on the premise that the 1974 legislation restricted bounty payments to be made only on cars abandoned in Maryland, Harris Affidavit ¶4. Mr. Harris stated that:

> *Contrary to the assertion made by Mr. Isadore Gittleson in paragraph five of his Affidavit* . . . prior to the effective date of [the 1974 legislation, Alexandria] submitted in connection with claims for bounty payments a number of indemnity agreements which indicated that the origin of the vehicle was the Police Department of the District of Columbia.

Harris Affidavit ¶5 (emphasis supplied).

Mr. Harris made further recitals which directly placed the accuracy of Mr. Gittleson's figures in doubt. Mr. Harris averred that it was the practice of scrap processors to require their sources of hulks to detach the Vehicle Identification Number Plate (VIN Plate)[27] prior to the vehicle's arrival at the scrapper's place of business, and then present this VIN Plate to MVA, with the appropriate documentation, when bounty payment was sought on a vehicle. As a result of this practice Mr. Harris swore that, on at least two occasions prior to the effective date of the legislation, Alexandria had presented a claim for bounty payment for a vehicle which another scrapper had previously certified as having been destroyed! Because it was not until July 1,

[27] Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, §11-1002.2(f)(5), provides that, in cases where a bounty is claimed by the submission of an indemnity agreement, the manufacturer's serial number or identification number shall be satisfactory proof, along with the indemnity agreement, that the vehicle has been destroyed. This number appears on a VIN Plate.

1974, that MVA developed the computer capability to compare vehicle destruction reports, it had been possible for Alexandria to claim bounties for vehicles abandoned outside of Maryland if they had been received accompanied by the VIN Plates of vehicles which had previously been titled in Maryland. Harris Affidavit ¶¶ 7-9.

Because, along with a Stipulation of Facts, these affidavits were the only evidence before the District Court, there existed a clear dispute over material facts. The District Court recognized this discrepancy, but ignored it. The Court noted "that the factual positions of the parties differ in some respects," but felt that "the uncontroverted facts" entitled Alexandria to summary judgment (Opinion of the District Court A. 3a). More importantly, the Court made a most remarkable statement about the quality of Mr. Harris' affidavit when it wrote:

> defendants have not proffered a scintilla of factual support for their assumption that non-resident processors are more likely than in-state processors to claim bounties for vehicles abandoned outside of Maryland. Although defendants *have suggested* that plaintiff has submitted to the MVA several indemnity agreements indicating the origin of a destroyed vehicle to have been the District of Columbia . . . .

Opinion of the District Court A. 20a (emphasis supplied).

There were only three documents placed in evidence in this case: a Stipulation of Facts, and two affidavits. Yet the District Court deemed a sworn statement made in one of those affidavits to have been merely a *suggestion*, presumably to lend credence to the Court's preceding claim that defendants had "not proffered a

scintilla of factual support" for the contention that limiting bounty payment to Maryland scrappers tended to insure that the vehicles for which bounties were claimed had been abandoned in Maryland. In fact, Appellants *had* offered this proof in the form of a sworn affidavit, but the Court sloughed this off as only a "suggestion." The Court should not have degraded the veracity of a sworn affidavit, particularly where the affiant was not testifying in open court, and thus his demeanor could not be observed.

In support of Mr. Harris' statement that Alexandria had been submitting bounty claims for cars which had been abandoned outside of Maryland, Appellants produced 56 indemnity agreements submitted by Alexandria to MVA for vehicles delivered during March, 1974, which indicated the source of these autos to be the District of Columbia Police Department. This bulky packet of agreements was not appended to the Harris Affidavit — although copies were presented to Alexandria — because Appellants saw nothing to be gained by so doing. Mr. Harris had directly contradicted a statement made in Mr. Gittleson's affidavit, and Appellants believed, and still contend, that this created a *prima facie* dispute over a material fact which should have necessitated an evidentiary hearing. At such a hearing the introduction of the 56 agreements, and similar ones from other months, would have been proper to resolve the competing contentions. As it happened, the Harris affidavit was the last of the three documents to be submitted to the District Court, and, therefore, nothing at all was before the Court which even purported to refute Mr. Harris' statement.

These evidentiary difficulties are most significant with respect to the Commerce Clause aspect of this

case. Alexandria had the burden of showing that Maryland's bounty scheme placed an undue burden on interstate commerce. The conflicting evidence concerned one facet of that question: How much of a burden was Alexandria forced to bear as a result of the 1974 legislation? For example, was there actually a decrease in the number of vehicle hulks leaving Maryland and entering Virginia? If so, was that decrease significant? Certainly if the number of scrapped automobiles coming out of Maryland was insubstantially reduced there could be no burden placed on interstate commerce.

Moreover, at a full evidentiary hearing this would have been only one aspect of the broader issue presented by Alexandria's Commerce Clause challenge. For, in order to prevail, Alexandria would have had to show that Maryland's program placed an undue burden on interstate commerce — *not* simply that a burden was imposed on the Alexandria Scrap Corporation. Commerce between Maryland wreckers and Alexandria, or even all commerce between Maryland and the Commonwealth of Virginia, is only one component of interstate commerce. In order to ascertain the effect of Maryland's program, interstate commerce *as a whole* must be examined.

Indeed, it is Appellant's contention that the Maryland bounty program is a boon to interstate commerce whether or not the Alexandria Scrap Corporation finds itself disadvantaged. The program, since its institution, has unquestionably led to more scrap metal being placed in the flow of commerce then was the case before its enactment. This stream of commerce includes the greater amounts of scrap metal shipped to steel mills in Pennsylvania and Maryland, and to other States in which steel is manufactured. In turn this has provided

more steel for the production of new automobiles in Michigan, and structural steel for use in all States. All of the specific consequences of Maryland's program cannot, of course, be enumerated here. However, had Appellants been accorded the opportunity to present this evidence, the District Court would have at least applied the correct Commerce Clause standard to this case: what was the effect of the Maryland law on the *totality* of interstate commerce, rather than its effect on only one minute component of that commercial exchange.

As it developed, the Court committed a fundamental error in resolving the narrower question of how Alexandria was affected by the Maryland legislation, and whether or not any adverse effects entitled Alexandria to relief under the Constitution. Alexandria attempted to show that after the passage of the 1974 amending legislation it was worse off financially than it had been previously. Appellants argue that even if this showing could be made, it would not have any constitutional impact. Alexandria's argument implicitly assumes that it was *entitled* to receive bounty payments prior to the 1974 amendment, and that any reduction in those payments resulted in injury to its financial position which could be rectified under the Constitution.

This certainly cannot be the correct method of measuring the effect of the 1974 legislation on Alexandria's business in so far as the Constitution is concerned. Rather, to determine whether or not the 1974 Maryland law had a cognizable effect on Alexandria, the proper procedure would be to measure Alexandria's situation as it existed in 1969 before *any* bounty program existed. At best, Alexandria is only *entitled* to reap whatever benefit it can derive from the free

marketplace. Neither Alexandria, nor any other wrecker or scrapper, whether located within Maryland or without, is "entitled" to receive price supportive bounty payments as a matter of right. Therefore, whether or not Maryland's scheme disrupts the natural market position to which Alexandria has a right can only be determined by comparing its post-*amendment* position with its pre-*program* predicament. When this comparison is made, the only conclusion which can be factually supported is that Alexandria is in a better position now, after the passage of the 1974 amendment, than it was before any program existed — it might have been in an even more enviable position at some other point in time, but that was a position which it enjoyed as a result of Maryland's generosity, and not as a matter of right. Because Alexandria still participates in Maryland's program, although not as actively as it once did, it continues to reap some benefits from the Maryland treasury, which is more than it received prior to the 1969 legislation. It should not be overlooked that, even today, Alexandria can participate in Maryland's program to an unlimited extent, as long as it follows the avenues open to non-Maryland scrappers. That these procedures are not even burdensome can be distilled from the absence of any other non-Maryland scrap processors in this litigation. *See also* Harris Affidavit ¶11.

A further example of the slovenly approach taken by the District Court may be found in the following language taken from its opinion:

> While, in the current summary judgment posture of this case, the extent to which old cars constitute the lifeblood of the scrap metal industry and the exact percentage of ferrous scrap sold to steel mills represented by vehicles eight years old or older

> *have not been established*, the importance of such vehicles to the scrap industry is without doubt substantial.

Opinion of the District Court A. 29a (emphasis supplied). Incredible as it may appear, the Court is saying that the extent of the injury claimed to have been suffered by Alexandria has "not been established." No matter what measure of damage one might employ to determine the precise effect of the 1974 amendment on Alexandria, there is no doubt that the foremost issue is whether an undue burden has been imposed on interstate commerce by the Maryland legislation. It is impossible to determine whether that burden is "undue" unless that burden is measured, and yet, here the Court notes that although the burden has not been established, that burden is "without doubt substantial." Thus, the District Court somehow devined a conclusion which disposed of the ultimate issue in the case, while acknowledging that Alexandria had not established the extent of the damage purported to have been wrought by the 1974 amendment.

The above excerpt from the District Court's opinion is also revealing in another respect. The Court seems to imply that because of "the summary judgment posture of this case," the fact that nothing definite has been established is of little, if any, moment. This seems to say that the burden of proof in summary judgment settings is somewhat less rigorous than it is in cases where evidentiary hearings are held. Nothing could be further from the truth. The standard for granting summary judgment demands a much stronger showing than that required for judgment after a full trial.

In this case, Alexandria filed a complaint which Appellants then moved to dismiss. The Court — not yet

a three-judge court — then requested that each party submit an affidavit. These were submitted and received, and, by operation of Rule 12(b) of the Federal Rules of Civil Procedure, Appellant's motion to dismiss was transformed into a motion for summary judgment, which, in turn, automatically raised a cross-motion for summary judgment by Alexandria[28].

Rule 12(b) states that such motions must be disposed of in accordance with Rule 56. Rule 56 provides that summary judgment shall be rendered if all of the pleadings and affidavits "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Manifestly, Alexandria did not sustain the burden of showing that it was entitled to summary judgment.

> [Rule 56] authorizes summary judgment 'only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, * * * [and where] no genuine issue remains for trial. . . .'

Poller v. Columbia Broadcasting Sys., Inc., 368 U.S. 464, 467, 82 S. Ct. 486, 488 (1962); *see also Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620, 627, 64 S. Ct. 724, 728 (1944). As has been demonstrated, a dispute over a genuine issue certainly did exist. This is especially evident when it is recognized that " '[o]n summary judgment the inferences to be drawn from the underlying facts contained in [the moving party's] materials must be viewed in the light most favorable to the party opposing the motion,' " *Adickes v. S. H. Kress*

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[28] An examination of the first few pages of the transcript of the hearing will readily reveal that everyone, including the members of the Court, was unsure of the procedural posture of the case. At first neither counsel believed that summary judgment motions were before the Court.

& *Co.*, 398 U.S. 144, 158-59, 90 S. Ct. 1598, 1609 (1970). With respect to Alexandria's motion for summary judgment, when Appellants' evidentiary offerings are examined in the light most favorable to them, the existence of a dispute over a genuine issue cannot be denied.

The procedural handling of this case in the District Court was most likely the result of a desire to save time by disposing of this case without an evidentiary hearing. Whatever may be the advantages of conserving valuable judicial time, the most expeditious route cannot be followed where it leads to a denial of due process of law to one of the parties. The Rule 12(b) provision providing for the automatic conversion of some motions to dismiss into summary judgment motions presents an enticing alternative to the rigors of a full hearing. However, it is a lure which must be resisted when summary judgment would be inappropriate. "Under this rule, *bona fide* factual disputes may not be disposed of through the use of affidavits, and the rule cannot be used as a substitute for a trial of the case," *Hanley v. Chrysler Motors Corp.*, 433 F.2d 708, 711 (10th Cir. 1970); *Eagle v. Louisiana & Southern Life Ins. Co.*, 464 F.2d 607, 608 (10th Cir. 1972). Disposing of factual disputes without according the parties an opportunity to be fully heard amounts to a denial of due process of law.

Judging from the amount of recent litigation in the United States Courts of Appeals, it appears that Rule 56 is increasingly being abused. In response to this practice the Circuit Courts have been unanimous in deploring trials by affidavit under the guise of motions for summary judgment. "Summary judgment is not to

be a trial by affidavit," *Gutor International AG v. Raymond Packer Co.*, 493 F.2d 938, 944 (1st Cir. 1974). *See also Walgren v. Howes*, 482 F.2d 95, 98 (1st Cir. 1973); *Benton-Volvo-Metairie, Inc. v. Volvo Southwest, Inc.*, 479 F.2d 135, 138 (5th Cir. 1973); *Zahora v. Harnischfeger Corp.*, 404 F.2d 172, 175 (7th Cir. 1968); *Champlin v. Oklahoma Furniture Mfg. Co.*, 269 F.2d 918, 922 (10th Cir. 1959).

Furthermore, in order to satisfy Rule 56, Alexandria *also* had to have been entitled to judgment as a matter of law. That Alexandria was not so entitled has been set forth in the Commerce Clause and Equal Protection Clause portion of this Jurisdictional Statement. For these reasons, Appellants were denied due process of law when the District Court granted summary judgment for Alexandria.

It is axiomatic that no court should ever decide a constitutional issue if the matter before it can be disposed of on other than constitutional grounds. In the context of three-judge courts faced with constitutional challenges to State statutes, the importance of full evidentiary hearings is particularly crucial. Such courts must be especially careful not to dispose of constitutional questions prematurely for at least two additional reasons: 1. The party who is unsuccessful before a three-judge court is never assured of complete appellate review because of the relatively few appeals which this Court decides on the basis of full briefs and oral argument; and, 2. The number of direct appeals from decisions of three-judge courts to this Court would be reduced. As occurred in this case, the three-judge court reached a constitutional question which it very well might have avoided had a complete hearing been

conducted.[29] With the number of direct appeals increasing at such a rate that a serious overcrowded docket problem exists in this Court today, the necessity for encouraging exacting procedures in the district courts has been enhanced.

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[29] The District Court could have properly declined to hear this case through the application of the abstention doctrine, which could have been appropriately invoked with respect to the case at bar. The regulation of scrap hulks is a matter of State concern involving a complex regulatory scheme which was obviously devised to protect public as well as private interests. The statute in controversy is facially ambiguous, and construction thereof by a Maryland court might well moot the constitutional questions presented. Because Maryland has adopted the Uniform Certification of Questions of Law Act, Code (1974) §§12-601 *et seq.* of the Courts and Judicial Proceedings Article, similar to that mentioned in Clay v. Sun Ins. Office Ltd., 363 U.S. 207, 212, 80 S. Ct. 1222, 1226 (1960), the obtention of such a construction would have been a relatively painless process.

CONCLUSION

The decision of the District Court and its procedural handling of this case were erroneous and resulted in large part from incorrect interpretation and application of this Court's prior rulings. In order to remedy the specific errors committed in this case, and to avoid the confusion which would result with respect to these previous cases if this Court disposed of this appeal summarily, this Court should accord plenary treatment to the substantial constitutional questions raised by this appeal.

Respectfully submitted,

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June 1975

Supreme Court, U. S.
FILED
JUN 20 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,

Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

APPENDIX TO JURISDICTIONAL STATEMENT

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APPENDIX

In the United States District Court
for the District of Maryland

Civil No. K-74-1030

Alexandria Scrap Corporation

v.

Harry R. Hughes, Secretary, Maryland Department of Transportation; Ejner J. Johnson, Administrator, Maryland Motor Vehicle Administration; Charles F. Pfaff, Deputy Administrator, Maryland Motor Vehicle Administration and Nance J. Stamboni, Director, Division of Vehicle Registration

(Filed: March 12, 1975)

Norman P. Ramsey, H. Thomas Howell and Carl E. Eastwick, of Baltimore, Maryland, for Plaintiff.

Francis B. Burch, Attorney General of Maryland, J. Michael McWilliams, Assistant Attorney General and Counsel to the Department of Transportation, Judson P. Garrett, Jr., Assistant Attorney General, and N. Barton Benson, Special Assistant Attorney General, for Defendants.

Before Winter, Circuit Judge, and Kaufman and Miller, District Judges.

Kaufman, District Judge.

Plaintiff, a Virginia corporation, with its principal place of business located in that State, is engaged in the business of processing iron, steel, and nonferrous scrap metal into scrap for sale for resmelting. Plaintiff challenges certain Maryland statutory provisions,

namely, 6 Md. Ann. Code art. 66½, §11.1002.2(f)(5) (1974 Cum. Supp.)[1] as repugnant to the Commerce Clause of the federal Constitution and as contravening, both facially and as applied, the Equal Protection Clause of the Fourteenth Amendment. Defendants are officials of the State of Maryland charged with the administration of the challenged statute. Jurisdiction in this case exists pursuant to 28 U.S.C. §§ 1331 and 1343.[2]

Plaintiff seeks injunctive relief[3] pursuant to the provisions of 28 U.S.C. §§ 2281 and 2284[4] and declaratory relief pursuant to the provisions of 28 U.S.C. §§ 2201 and 2202. Specifically, plaintiff asks this Court to declare unconstitutional the provisions of section 11-1002.2(f)(5) and accordingly either to (1) require defend-

[1] Hereinafter, all references to 6 Md. Ann. Code art. 66½ (1974 Cum. Supp.) are cited only by section number.

[2] Jurisdiction may also exist under 28 U.S.C. § 1332. However, defendants contend that plaintiff, a Virginia corporation, has not registered to do business in Maryland pursuant to 2B Md. Ann. Code art. 23, § 90 (1973 Repl. Vol.) and that that failure so to register precludes plaintiff from suing in a Maryland state court under 2B Md. Ann. Code art. 23, § 91(c) (1973 Repl. Vol.) and thus in this federal court in a case bottomed upon diversity jurisdiction. Woods v. Interstate Realty Co., 337 U.S. 535, 538 (1949). Whether plaintiff is doing business within Maryland, *see* G.E.M., Inc. v. Plough, Inc. 228 Md. 484, 488 (1962) and/or whether, pursuant to Allenberg Cotton Co. v. Pittman, 42 L. Ed. 2d 195, 206 (1974), plaintiff is a foreign corporation engaged only in interstate commerce within Maryland and is thus entitled to access to Maryland's courts and to this Court in a diversity case, pose issues which need not be resolved herein since jurisdiction other than diversity jurisdiction is present.

[3] Plaintiff's initial request for preliminary injunctive relief has not been pressed in light of efforts made by all concerned to ensure a speedy adjudication of the within controversy.

[4] Defendants, contending that there does not exist any sufficiently "substantial" federal question warranting the convening of a three-judge court, oppose the same. Goosby v. Osser, 409 U.S. 512, 518-19 (1973); *Ex parte* Poresky, 290 U.S. 30, 32 (1933); Citizens for a Representative General Assembly v. Governor of Maryland, 429 F.2d 606, 611 (4th Cir. 1970).

ants to give certain "indemnity agreements" entered into by plaintiff the same effect as is given such agreements when entered into by licensed scrap processors whose plants are located within the State of Maryland and to enjoin defendants from withholding certain bounty payments which would be payable to plaintiff if its plant were so located, or, alternatively, (2) deny to licensed scrap processors with plants located and operating within the State of Maryland the authority to execute and file such indemnity agreements and also deny to them payment of bounties pursuant to such agreements.

Both sides seek summary judgment upon the basis of factual stipulations filed herein. While this Court notes that the factual positions of the parties differ in some respects, the uncontroverted facts entitle plaintiff, in the opinion of this Court, to the grant of summary judgment.

I. The Facts

A. *The Legislative Scheme*

By 1969, as the Court of Appeals of Maryland stated in *Administrator, Motor Vehicle Administration v. Vogt*, 267 Md. 660, 670 (1973), in which it upheld the 1969 legislation in the face of an equal protection attack,

> * * * problems developing from the storage of old automobiles . . . had become a cause for concern in terms of environmental health [in Maryland]. There was evidence, for example, that some hulks [had] . . . remained undisturbed so long that they [had] . . . become infested with rodents. * * *[4a]

The view which this Court takes of the Commerce Clause and equal protection questions posed herein, namely, that plaintiff is entitled to relief, forecloses that argument by defendants and supports the calling and constitution of the three-judge court in this case.

[4a] "Prior to the 1969 enactment, wreckers and scrap processors were the subjects of modest regulation under the Motor Vehicle Code, and surely were not part of a comprehensive scheme." *Vogt, supra* at 667.

In response to those and related problems, the Maryland legislature enacted in 1969 a comprehensive program designed "to halt the growth of this trend and to induce recycling of vehicles which had fallen into disuse." *Id.* That legislation, and subsequent amendments thereto, have contained three essential and interrelated provisions. First, auto wreckers[5] and scrap processors[6] who wish to dispose of abandoned vehicles in Maryland are required to be licensed by the State.[7] Second, such auto wreckers are required to pay a semiannual assessment upon vehicles older than ten model years which remain in their possession for more than one year.[8] Third, the payments of certain bounties will be made by the State upon the destruction of certain vehicles formerly titled in Maryland.[9]

Section 5-201 (1973 Repl. Vol.) provides as follows:

> It is unlawful for any person, firm, or corporation, on and after January 1, 1970, to store any vehicle, or body or chassis thereof, which is to be scraped, dismantled, or destroyed, on any private property for a period in excess of thirty days,

[5] Section 5-201.1(b) (1970 Repl. Vol.) provides:

> (b) "*Wrecker*" means every person, firm, or corporation engaged in the business of purchasing or otherwise acquiring vehicles for the benefit of the materials contained therein or parts thereof. [Emphasis in original.]

[6] Section 5-201.1(a) provides:

> (a) "*Scrap processor*" means an establishment having facilities for processing iron, steel and nonferrous scrap metal and whose principal product is scrap iron, steel and nonferrous scrap for sale for resmelting purposes only which is licensed under the provisions of this part. [Emphasis in original.]

[7] *See* section 5-201, discussed *infra* at p. 5.

[8] *See* section 5-203, discussed *infra* at pp. 5, 7.

[9] *See* section 5-205, discussed *infra* at p. 7.

> unless the person, firm, or corporation is licensed as a wrecker, as hereinafter provided, or operates an establishment as a scrap processor.
>
> From and after January 1, 1970, licenses for scrap processors and wreckers shall be issuable only to those persons, firms, or corporations as those terms are defined in § 5-201.1.[9a]

To obtain a license pursuant to section 5-201, a wrecker or scrap processor must comply with the requirements set forth in section 5-202.[10] Those statutory require-

[9a] *See* n. 5 and n. 6.

[10] That statute provides:

> (a) No wrecker or scrap processor shall be entitled to obtain a license unless:
>
> 1. Application for a license shall be made to the Administration on forms prescribed by it.
>
> 2. The applicant's business is conducted at a fixed location;
>
> 3. The applicant's storage area is sufficient to accommodate at least twenty-five (25) vehicles to be scrapped, dismantled, or destroyed;
>
> 4. The applicant maintains a substantial office in which books of account and records of such business are kept;
>
> 5. The applicant has erected a substantial and legible sign, in a location on the site of the place of business readily seen by the public, advertising the type of business conducted at such location;
>
> 6. The fee of $15 is paid to the Administration for the issuance of such wrecker's license and a fee of $100 is paid to the Administration for the issuance of such scrap processor's license. Said licenses to be renewed annually;
>
> 7. A copy of the application shall be submitted to the State Department of Health and Mental Hygiene for its comments on matters pertaining to air pollution and health generally.
>
> 8. In the case of a scrap processor, he maintains a hydraulic baler and shears, or a shredder, or such other equipment suitable for processing motor vehicle scrap as required by regulation of the Administration.
>
> (b) A fee of $1.00 shall be paid and shall accompany an application for a duplicate wrecker's or scrap processor's license on forms prescribed by the Administration.

ments in no way differentiate between scrap processors with plants physically located in Maryland and others with no plants so situated. An administrative regulation pursuant to that statute does, however, require that the latter class of processors maintain an office within Maryland. M.A.R.R. 11.02.05.45.[11]

Pursuant to the provisions of section 5-203(a),[12] a licensed auto wrecker who places a vehicle in his inventory must report that fact to the State Motor Vehicle Administration (hereinafter MVA) within thirty days of acquisition. Thereafter, pursuant to section 5-203(d)[13] a wrecker is subjected to a $5

[11] That regulation states:

The State Motor Vehicle Administration in the exercise of its administrative discretion, may license scrap processors not geographically located within the boundaries of the State of Maryland, provided that such scrap processor maintains an office in the State of Maryland, that shall be approved by this agency.

[12] That statute provides:

(a) *Notice of acquisition of vehicle.* — Every wrecker engaged in the business of purchasing or otherwise acquiring vehicles for the purpose of scrapping, dismantling, or destroying, shall notify the Administration of the acquisition of such vehicles upon forms prescribed by the Administration within thirty (30) days of the date of acquiring such vehicles.

[13]

(d) *Authority of Administration to prescribe forms and promulgate rules and regulations.* — The Administration shall prescribe forms and have the authority to promulgate rules and regulations pertaining to the manner in which a wrecker or scrap processor notifies the Administration of receipt of a vehicle or body or chassis thereof to be scrapped, dismantled, or destroyed and the manner in which an assessment is placed upon a wrecker if a vehicle or body or chassis thereof has a designated model year in excess of ten years, as determined by a national publication of used car values adopted for use by the Administration is not scrapped, dismantled, or destroyed within one year from the date a wrecker acquires possession of the vehicle or body or chassis

assessment every six months for each vehicle more than ten years old which has remained in his possession longer than one year. The parties hereto agree that that assessment requirement has had the salutary effect of encouraging the removal of some hulks from automobile graveyards and of limiting the growth of auto wrecker yards. However, they also agree that the assessment provision, standing by itself, has the inevitable effect of discouraging auto wreckers from picking up older vehicles — an effect which would run counter to the objectives of the total legislative scheme. Accordingly, in order to provide the wreckers with an incentive, a bounty program was established by section 5-205 which provides:

> The Administration shall pay a fee of sixteen dollars ($16.00) for each vehicle which has been completely destroyed upon presentation by the scrap processor to the Administration of the certificate of title or other acceptable evidence of ownership for a vehicle formerly titled in this State, the manufacturer's serial or identification number plate, satisfactory proof that the vehicle has been completely destroyed and any other information the Administration may deem necessary. In all cases where one of the counties of this State or Baltimore City receives reimbursement for a vehicle pursuant to the provisions of § 11-1002.2 of this article, the Administration shall pay the above fee even if the vehicle totally destroyed was never titled in this State. The Administration shall disburse this fee in the following manner: Eight dollars ($8.00) to a scrap processor and eight dollars ($8.00) to the wrecker conveying ownership of the vehicle to be destroyed to such scrap processor. Scrap processors and wreckers must be licensed under this part to be eligible for this fee.

thereof, and the assessment shall be in the amount of $5 for each and every six (6) month period the vehicle or body or chassis thereof remains not scrapped, dismantled, or destroyed. For the purpose of administering this subsection as it relates to assessments, vehicles shall not include trucks, truck tractors or trailers.

> No fee shall be paid by the Administration for any vehicle destroyed by any scrap processor prior to July 1, 1970, and the Administration shall require satisfactory evidence confirming the date that such vehicle was destroyed in the form and manner prescribed by the Administration.[14]

The parties agree that the availability of the "bounty" payments results in an artificially enhanced value for abandoned hulks, that is, a value in excess of their normal market prices. Licensed wreckers benefit directly from the bounty which they are statutorily entitled to share. Non-licensed wreckers or towers are, however, also benefitted because, as the parties hereto agree, while non-licensed wreckers are not statutorily entitled to a share of the bounty, the availability of such a bounty to the processor enables a processor to pay an increased price for an automotive hulk to all wreckers, licensed or unlicensed, and that in fact as a matter of custom processors do rebate a substantial portion of the bounty to all wreckers as an incentive for future deliveries.

To receive any bounty pursuant to section 5-205, a processor must present to the MVA, *inter alia,* "the certificate of title or other acceptable evidence of ownership for a vehicle formerly titled in this State". Prior to July 1, 1974, in apparent recognition that the free transfer of abondoned vehicles was in part impeded

[14] Under the bounty program, an auto wrecker, when reporting his inventory of vehicles monthly to the MVA, receives a four-part Certificate of Disposal for each vehicle. The wrecker retains that Certificate in his file until he elects to dispose of the vehicle to a scrap processor, at which time the wrecker assigns the Certificate to the processor and furnishes the latter with two of the four copies. The third copy goes into the auto wrecker's file; the fourth copy is sent to MVA as a report that the vehicle is no longer in the inventory of the wrecker. That relieves the auto wrecker of the $5 assessment. Upon receipt of the vehicle and two copies of the Certificate of Disposal, the processor destroys the vehicle, certifies its destruction on one of two certificates, and forwards the certificate to the MVA for payment of the bounty.

by fears on the part of scrap processors and auto wreckers of potential claims against them by owners or alleged owners of abandoned vehicles, there existed four methods pursuant to which a licensed scrap processor could receive a bounty payment and acquire ownership of an abandoned vehicle without receiving a certificate of title. First, an abandoned vehicle could be taken into custody by local police and sold after due notice.[15] Second, the

[15] Section 11-1002.2(a)-(d) provides:

> (a) *Notice to last known registered owner.* — A police department which takes into custody an abandoned motor vehicle shall, as soon as reasonably possible and in any event within seven days thereof, by registered mail, return receipt requested, signed by the addressee, notify the last known registered owner of the motor vehicle and all lienholders as shown on the records of the Department that the vehicle has been taken into custody. The notice shall describe the year, make, model, and serial number of the abandoned motor vehicle; set forth the location of the facility where the motor vehicle is being held, inform the owner and any lienholders of their right to reclaim the motor vehicle within three weeks after the date of the notice, upon payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, and state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lienholders of all right, title, and interest in the vehicle and consent to the sale of the abandoned motor vehicle at a public auction.
>
> (b) *Notice by publication.* — If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, or if the registered mail notice required by subsection (a) of this section is returned as undeliverable, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this section. The notice by publication may contain multiple listings of abandoned vehicles. Such notice shall have the same contents as those required by registered mail, and shall be published within fifteen

police could issue to a scrap processor or wrecker a certificate of authority to sell or otherwise dispose of a vehicle to "[a]ny person, firm, corporation, or unit of

days of the taking into custody of the motor vehicle except that in the case of said notice by reason of the return as undeliverable of notice by registered mail the notice shall be published within seven days of such return.

(c) *Effect of failure to reclaim vehicle.* — The consequences and effect of failure to reclaim an abandoned motor vehicle shall be as set forth in a valid notice given pursuant to subsections (a) and (b).

(d) *Sale; disposition of proceeds.* — If an abandoned motor vehicle has not been reclaimed as provided for in subsections (a) and (b), the police department shall sell it at public auction. The purchaser of the motor vehicle shall take title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department, and shall be entitled to register the purchased vehicle and receive a certificate of title. The sales receipt at such a sale shall be sufficient title only for purposes of transferring the vehicle to a scrap processor for demolition, wrecking, or dismantling, and in such case, no further titling of the vehicle is necessary. From the proceeds of the sale of an abandoned motor vehicle the police department shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing the vehicle which resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred pursuant to subsections (a) and (b), of this section. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for ninety days, and then shall be deposited with the State Treasurer in the Abandoned Vehicles Fund, as provided for in § 3-830.

Whenever the proceeds of a sale of such other abandoned vehicles are not sufficient to meet the expenses incurred, the Administration shall reimburse the several counties of the State and Baltimore City the sum of ten dollars ($10.00) from the fund established in § 3-830 of this article for each vehicle taken into custody by a county, or Baltimore City, when such vehicle is sold for the purpose of total destruction and when acceptable evidence is presented to the Administration that such vehicle has been totally destroyed.

government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost or destroyed * * *".[16] Third, pursuant to

The reimbursement of expenses from the Abandoned Vehicles Fund to the several counties and Baltimore City shall only apply to abandoned vehicles which are removed from public or private property of this State on and after July 1, 1972.

[16] Section 11-1002.2(f) provides, in pertinent part:

(f) *Disposition of vehicle to scrap processor or wrecker.* — (1) Any person, firm, corporation, or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost or destroyed, may apply to the police department of the jurisdiction in which the vehicle is situated for authority to sell, give away or dispose of the vehicle to a scrap processor or wrecker.

(2) The application shall set out the name and address of the applicant, the year, make, model, and serial number of the motor vehicle, if ascertainable, together with any other identifying features, and shall contain a concise statement of the facts surrounding the abandonment, or that the title of the motor vehicle is lost or destroyed, or the reasons for the defect of title. The applicant shall execute an affidavit stating that the facts alleged therein are true and that no material fact has been withheld.

(3) If the police department finds that the application is executed in proper form and shows that the motor vehicle has been abandoned upon the property of the applicant, or if it shows that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the police department shall follow the notification procedures set forth in subsections (a) and (b) of this section.

(4) If an abandoned motor vehicle is not reclaimed in accordance with subsections (a) and (b), the police department shall give the applicant a certificate of authority to sell the motor vehicle to any wrecker or scrap processor for demolition, wrecking, or dismantling. The wrecker or scrap processor shall accept such certificate in lieu of the certificate of title to the motor vehicle.

section 5-203(b)[17] a wrecker could acquire "possession of a vehicle * * * for which there is no certificate of title, or certificate of authority * * *" and could, after the vehicle had been in his possession more than thirty days and after proper notice to the MVA, dispose of the same by sending a "notice of intent to dispose of the vehicle * * * to the owner and any lienholder as shown on the records of the Administration or any other person entitled to possession of the vehicle * * *, if his address is known or can be reasonably obtained." If the vehicle was over eight years old and "totally inoperable", however, no such notice needed be given except to the owner. The statute provided however that if the owner or such other person "fails to recover or claim the vehicle * * * within the ten (10) day period specified" in the notice, the wrecker "shall take and assume free and clear title to the said vehicle * * *".[17a]

[17] That statute provides:

(b) *Notice of intent to dispose of vehicle.* — If a wrecker acquires possession of a vehicle, or body or chassis thereof, for which there is no certificate of title, or certificate of authority and the vehicle, or body or chassis thereof, has been in the possession of the wrecker for a period of more than thirty (30) days, the wrecker shall send a notice of intent to dispose of the vehicle, or body or chassis thereof, at least ten (10) days prior thereto by registered mail to the owner and any lienholder as shown on the records of the Administration or any other person entitled to possession of the vehicle, or body or chassis thereof, if his address is known or can be reasonably obtained.

The provisions of this section which relate to the period of possession on the records of the Administration or any other person entitled to possession of a vehicle and the notification procedure shall not apply to abandoned vehicles which are over eight (8) years old and are totally inoperable.

[17a] Section 5-203(c) (1970 Repl. Vol.) provides:

(c) *When wrecker may assume ownership of vehicle without certificate of title.* — If the owner of the vehicle, or body or chassis thereof, or any other person entitled thereto, or any lienholder having an interest therein fails to recover or claim the vehicle, or body or chassis thereof, within the ten (10) day period specified in the aforementioned notice, the wrecker having possession of the vehicle, or body or chassis thereof, shall take and assume free and clear title to the said vehicle, or body or chassis thereof, without the necessity of securing a certificate of title, as is required by the provisions of this article. The assumption of ownership by the wrecker shall be certified on forms prescribed by the Department and forwarded to it within five (5) days from the date ownership has been assumed by the wrecker.

If the address of the owner, lienholder, or any other person entitled to possession of the vehicle, or body or chassis thereof, for which there is no certificate of title, cannot be reasonably obtained from the records of the Department, or by the exercise of reasonable diligence, the wrecker having possession of the vehicle or body or chassis thereof shall take and assume free and clear title to the vehicle, or body or chassis thereof, after the aforementioned thirty (30) day period. The assumption of ownership by the wrecker shall be certified on forms prescribed by the Department and forwarded to it within five (5) days from the date ownership was assumed by the wrecker.

Additionally, and further, prior to July 1, 1974, section 11-1002.2(f)(5) provided:

> Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is otherwise totally inoperable.

In its 1974 session, the General Assembly of the State of Maryland left unchanged the first three said

methods, but changed the fourth method by amending section 11-1002.2(f)(5) to add the following language:

> In those cases only *a scrap processor whose plant is physically located and operating in this State* shall execute an indemnity agreement that shall be filed with the Motor Vehicle Administration. The indemnity agreement shall contain the name, address and signature of the person delivering the vehicle. The indemnity agreement and the manufacturers serial or identification number shall be satisfactory proof that the vehicle has been destroyed and shall be acceptable for payment of the full bounty authorized by § 5-205 if the vehicle identified in the indemnity agreement was titled in this State. Otherwise, for the purpose of administering the provisions of this section, the provisions of § 5-205 shall not apply. [Emphasis supplied.][18]

Under the 1974 amendment, a scrap processor with no plant physically located and operating within Maryland continues to be able to participate in Maryland's bounty program. However, such processor, unlike a processor with a plant physically located and operating within Maryland's boundaries, may not obtain any bounty for the destruction of an abandoned vehicle over eight years old by simply filing an indemnity agreement. Further, the statute, as amended in 1974, may well afford to an in-state processor

[18] Prior to July 1, 1974, scrap processors required persons delivering to them vehicles for destruction to execute so-called "indemnity agreements" unless the vehicle was accompanied by a title certificate. By executing such an agreement, a transferor certified that he had legal ownership of and authority to deliver the vehicle, agreed to indemnify the scrap processor from all liability for claims arising from destruction of the vehicle, and warranted compliance with all Maryland laws and regulations. (Stipulation 14). Prior to July 1, 1974, such indemnity agreements may have been of questionable legal effect. In any event there is seemingly no reference in the pre-1974 Maryland statutory scheme to indemnity agreements.

statutory protection from claims of owners or alleged owners if he obtains an indemnity agreement. By way of contrast, pursuant to the 1974 amendment, a nonresident processor would not appear entitled to receive that protection even if he has obtained an indemnity agreement.

B. *The Status of Plaintiff*

Plaintiff, a licensed scrap processor since the inception in 1969 of Maryland's abandoned vehicle legislation (Stipulations 3, 7; Exh. A thereto), is one of sixteen licensed processors and one of seven such processors with no physical plant located in Maryland (Stipulation 9). Plaintiff maintains an office in Silver Spring, Maryland, where it keeps records relating to its Maryland business (Stipulation 8). Plaintiff ranks third among the sixteen processors currently licensed by Maryland in terms of bounty payments received. Through September 30, 1974, plaintiff had received $219,084 in such payments, representing approximately 13.7% of all such payments made by the MVA since the program's inception (Stipulation 13).

II. The Proprietary-Governmental Distinction

The State of Maryland contends that its activities in seeking to rid the State of abandoned vehicles are not subject to constitutional limitations imposed by either the Commerce Clause or the Equal Protection Clause of the Fourteenth Amendment because those activities are not normal activities of a government but rather fall into the category of those activities in which a government acts as does a businessman.

> Governments in the United States traditionally possess two kinds of power: one, governmental or public, in the exercise of which it is a sovereign and governs its people; the other, proprietary or business, by means of which the government acts and contracts for the private advantage of its constituents and of the government itself. Each of these types of power is limited by distinct sets of rules. In order to protect the rights and freedoms of

> private citizens from oppressive interference, the power of a state to govern is restricted by its own constitution and provisions of the federal constitution as well. When the state exercises its proprietary or business power, however, it is subject to no more limitation than a private individual or corporation would be in transacting the same business. While the line between governmental and proprietary function is none too sharply drawn and is subject to modification as concepts of government are changed to meet the demands of society, one principle remains fixed: the letting of public contracts, particularly those providing for internal needs of government, is a proprietary function. * * * [Footnotes omitted.]

American Yearbook Co. v. Askew, 339 F. Supp. 719, 721 (M.D. Fla.), *aff'd,* 409 U.S. 904 (1972); *Cf. Town of Graham v. Karpark Corp.,* 194 F.2d 616, 620 (4th Cir. 1952); *Krisel v. Duran,* 258 F. Supp. 845, 853 (S.D.N.Y. 1966) (Weinfeld, J.), *aff'd per curiam,* 386 F.2d 179 (2d Cir. 1967).

In *American Yearbook, supra,* a Florida statute requiring all of the State's public printing to be done in Florida was upheld as a valid exercise of the State's proprietary power. In so doing, the three-judge court relied in part upon *Atkin v. Kansas,* 191 U.S. 207 (1903), which involved a Kansas statute prohibiting persons performing contracts entered into with the State of Kansas from requiring or allowing their employees to work in excess of eight hours a day on work connected with those contracts. Atkin, an employer charged with violating that statute, contended that he had been denied equal protection of the laws since employers not performing work under and connected with state contracts were not similarly restricted. In upholding the Kansas statute, Mr. Justice Harlan wrote (at 224):

> * * * We rest our decision upon the broad ground that the work being of a public character, absolutely under the control of the state and its municipal agents acting by its authority, it is for the state to prescribe the conditions under which it

> will permit work of that kind to be done. Its action touching such a matter is final so long as it does not, by its regulations, infringe the personal rights of others; and that has not been done.

The line between proprietary and governmental functions is by no means a precise one. As Judge Tjoflat observed (at 721) in *American Yearbook, supra,* it is a line "subject to modification as concepts of governments are changed to meet the demands of society * * *". Fortunately, in the context of this case, it is also a line which need not be determined with surveyor-like precision. Pursuant to Maryland's abandoned vehicle legislation as enacted in 1969 and as amended thereafter, the State has not chosen to contract in a business context with scrap processors and to specify conditions with respect to the latters' performance of such contracts. Rather, in electing to act as it did in exercising its police power to preserve the State's natural resources, the State elected to act in a traditional governmental capacity. While defendants contend that the 1969 legislation as amended has not been enacted pursuant to the State's police power, that contention comports neither with established legal principles nor with the facts. *See generally Potomac Sand & Gravel Co. v. Governor,* 266 Md. 358, 373 (1972). *And see particularly Administrator, Motor Vehicle Administration v. Vogt,* 267 Md. *supra* at 675 in which Judge Levine wrote: "Although the question of whether this enactment constituted a reasonable exercise of the police power is not before us, the testimony clearly established that for reasons of environmental health, the legislation was designed to arrest the increasing accumulation of automobile hulks, and to promote their recycling."

III. Equal Protection Standards

A legislative program which does not operate in an area of fundamental interests or to restrict fundamental rights is to be accorded broad deference under the Equal Protection Clause.

> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power

to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 79 [1911].

Morey v. Doud, 354 U.S. 457, 463-64 (1957). *Accord, Danbridge v. Williams,* 397 U.S. 471, 485 (1970); *see also Village of Belle Terre v. Boraas,* 416 U.S. 1, 8 (1974); *Reed v. Reed,* 404 U.S. 71, 75-76 (1971); *Ferguson v. Skrupa,* 372 U.S. 726, 732 (1963); *McGowan v. Maryland,* 366 U.S. 420, 425 (1961). In that last cited case, Mr. Chief Justice Warren, writing in the touchy context of rejecting a challenge to Maryland's Sunday Blue Laws, observed (at 425-26): "State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." But in spite of the considerable deference to be accorded statutory discriminations, particularly those operating in a purely economic arena, Mr. Justice Burton, in the course of holding an Illinois statute violative of equal protection principles, made clear in *Morey v. Doud, supra* (at 466) that "distinctions in the treatment of business entities engaged in the same business activity . . . cannot be . . . justified if the 'discrimination has no reasonable relation to these differences.' * * *" (citation omitted). Similarly, Mr. Chief Justice Burger has indicated in *Reed v. Reed, supra* at 76, that in general, in the framework of equal protection principles, though not in

the context of a business-type case, "[a] classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' *Royster Guano Co. v. Virginia,* 253 U.S. 412, 415 (1920)." *See Dukes v. City of New Orleans,* 501 F.2d 706, 709-11 (5th Cir. 1974) (Goldberg, J.).

Defendants argue that the 1974 amendment should be sustained because it serves two state interests: (1) it limits the payment under Maryland's bounty program to Maryland vehicles abandoned within the State; and (2) it insures that bounty recipients are fully subject to the laws of Maryland and available to its judicial process. But neither of those two interests are in any rational manner advanced by the 1974 amendment. The State's interest in assuring that bounty recipients be fully subject to its laws and process does not require that such a recipient have a physical plant located within Maryland. A processor such as Alexandria Scrap must, before it is licensed by Maryland as a scrap processor, establish a records type office in Maryland and submit to periodic inspection by Maryland officials of its records, *see* §§ 5-206,[19] 5-207,[20] and M.A.R.R.

[19] Section 5-206 provides:

> A wrecker and a scrap processor shall keep an accurate and complete record of all motor vehicles purchased or received by him in the course of his business. These records shall contain the name and address of the person from whom each motor vehicle was purchased or received and the date such purchases or receipts occurred and such other information that may be required by the Department. The records shall be open for inspection by a police department at any time during normal business hours. Any record required by this section shall be kept by the scrap processor for at least three years after the transaction to which it applies.

[20] Section 5-207 provides:

> The Department may promulgate other rules and regulations and prescribe forms necessary to administer the provisions of this part relating to wreckers and scrap processors.

11.02.05.36 & .43.[21] Moreover, such a processor transacts sufficient business in Maryland so as to be within reach of Maryland's "long arm" statute, Md. Ann. Code *Cts. & Jud. Proc.* art., § 6-103(b)(1) (1974),[22] and, in addition, could seemingly be required by Maryland, before the payment to such processor of any bounty, contractually to agree to submit to Maryland's jurisdiction.

As to their argument that the 1974 amendment helps limit the payment of its bounty monies to vehicles abandoned within the state boundaries, defendants have not proffered a scintilla of factual support for their assumption that nonresident processors are more likely than in-state processors to claim bounties for vehicles abandoned outside of Maryland. Although defendants have suggested that plaintiff has submitted to the MVA several indemnity agreements indicating the origin of a destroyed vehicle to have been the District of Columbia (Affidavit of Thomas E. Harris, Chief of the Licensing and Consumer Services Division of the MVA, Para. 5), there is no indication that MVA has ever informed any licensed processor that bounties may not be collected for such vehicles. Nor is there any statutory or administrative requirement, or any practice, which provides that there be set forth in an indemnity agreement the source of the abandoned vehicle. All that

[21] Those two regulations respectively provide:

.36 Each scrap processor's location shall be subject to inspection by an authorized representative of the State Motor Vehicle Administration prior to the issuance of such license.

.43 The premises and books and records regarding purchases, sales, transfers of ownership and other related material shall be available for inspection by an authorized representative of the State Motor Vehicle Administration or law enforcement agencies.

[22] Section 6-103(b)(1) provides:

(b) *In general.* — A court may exercise personal jurisdiction over a person, who directly or by an agent:

(1) Transacts any business or performs any character of work or service in the state; * * *.

is needed is that the vehicle have been a Maryland-titled vehicle. Moreover, the provisions of the amendment in no way include any requirement that a Maryland-titled vehicle be abandoned within rather than without Maryland in order to qualify for a bounty. Defendants urge that that requirement is "implicit" in the 1974 amendment and that that statutory enactment, at the worst, should be construed as an inartfully drafted, eleventh hour provision. But no such urging can alter the clear and contrary meaning of the terms of the amendment itself. It is also to be noted that under the Maryland statutory scheme as currently amended, a processor which is essentially an out-of-state processor and which has its principal plant out of state could, if it desired, go to the expense of erecting a costly processing facility within the State, and then proceed to scrap vehicles, in connection with which bounties are claimed and indemnity agreements are entered into, at either or both of its in-state and out-of-state plants. In any event there is no indication that the fact that a processor has an in-state plant will likely affect the sources of the vehicles.

The theoretical possibility of course exists that the in-state facilities of processors could be inspected more conveniently by Maryland officials. In that connection those officials would have the support of Maryland's law enforcement bodies to conduct such inspections within the State. However, in oral argument to this Court, counsel for the State candidly stated that the MVA possesses sufficient power to enforce its inspection requirements against a nonresident processor by stripping the latter of its license;[23] that the State has not to date physically inspected the facilities of in-state processors for evidence of fraud in connection with indemnity agreements; and that such inspection would reveal little or nothing of value to an inspector which

[23] Section 5-601 provides:

The Department may refuse, suspend, or revoke any license issued under this article relating to wreckers and scrap processors if the Department finds that the licensee is violating any provisions of this article or the applicable rules and regulations promulgated by it or the State Department of Health.

could not be determined from an inspection of records.[24] In that latter regard it has been pointed out that under normal operating procedures, vehicle identification plates are detached from abandoned vehicles before those vehicles are delivered to a processing plant. *See* Harris Affidavit, Para. 7. Thus, inspection at a processing plant would not reveal the source of an abandoned vehicle. And, finally, counsel for the State during oral argument stated to this Court that the statutory discrimination between in-state and nonresident processors had in no way been premised by the state legislature upon the greater inspection opportunities available as to the in-state processor.

In this case, the 1974 amendment does not, as applied, protect a "closed class" of scrap processors. Indeed, plaintiff does not suggest that any processor has been explicitly favored by the 1974 legislation as was the case in *Morey, supra,* or that any one processor has been exclusively benefited thereby as was the case in *Dukes v. City of New Orleans, supra* at 712. However, the cost of the heavy equipment required to set up a scrap processing plant does have the practical effect of discouraging the entry of new competitors. Stipulation 10. In that connection plaintiff has alleged that two named corporations with extensive Maryland operations are deriving special advantages from the 1974 amendment. Disregarding that allegation and with every due regard to the liberal equal protection standards set forth in *Morey* and in many other cases, the 1974 amendment cannot withstand plaintiff's equal protection attack. Given, in the current summary judgment posture of this case, every factual inference in its favor, that statutory provision creates a classification which has no basis in reason. Accordingly, the 1974 amendment cannot withstand the within equal protection challenge.

[24] The State has also stated that it has not to date required nonresident processors even to keep their records at the office it requires them to maintain within the State.

IV. Commerce Clause Analysis

Nor can the 1974 amendment survive scrutiny under well-established Commerce Clause principles.

> Buying for shipment, and shipping, to markets in other states * * * constitutes interstate commerce, — the buying being as much a part of it as the shipping. * * *

Shafer v. Farmers Grain Co., 268 U.S. 189, 198 (1925). The movement of automobile hulks across state lines constitutes interstate commerce.[25] Further, such movement is but a prelude to the movement of processed scrap to steel mills throughout the country.[26] The power to regulate interstate commerce is expressly confided to the federal Congress pursuant to the Commerce Clause. But in the absence of congressional legislation, "there is a residuum of power in the state to make laws governing matters of local concern which nevertheless in some measure affect interstate commerce or even, to some extent, regulate it. * * *" *Southern Pacific Co. v. State of Arizona ex rel. Sullivan,* 325 U.S. 761, 767 (1945). In the wrecked vehicles field of business no congressional legislation has preempted state action. Accordingly, the test by which the validity of Maryland's legislation must be measured is that set forth by Mr. Justice Stewart in *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 142 (1970):

> Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that

[25] Plaintiff herein has asserted, for example, that 40% of its total requirement for unprocessed scrap is satisfied by vehicles delivered from Maryland and that a substantial part of the plaintiff's dealings with old cars is derived from plaintiff's operations related to the Maryland statute. Defendants have not admitted those allegations but even so it is apparent that the movement of vehicles across state lines involving plaintiff is substantial.

[26] *Cf.* Allenberg Cotton Co. v. Pittman, 42 L.Ed. 2d 195 (1974); Hackensack Meadowlands Development Commission v. Municipal Sanitary Landfill Authority, 127 N.J. Super. 160, 316 A.2d 711, 716 (1974).

emerges can be phrased as follows: Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. Huron Cement Co. v. Detroit, 362 U.S. 440. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. Occasionally the Court has candidly undertaken a balancing approach in resolving these issues, Southern Pacific Co. v. Arizona, 325 U.S. 761, but more frequently it has spoken in terms of "direct" and "indirect" effects and burdens. See e.g., Shafer v. Farmers Grain Co., supra.

Mr. Justice Jackson, referring to an earlier opinion by Mr. Justice Cardozo in *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935), wrote that in *Baldwin* Mr. Justice Cardozo recognized a "broad power in the State to protect its inhabitants against perils to health or safety, fraudulent traders and highway hazards, even by use of measures which bear adversely upon interstate commerce. But it [Mr. Justice Cardozo's opinion in *Baldwin*] laid repeated emphasis upon the principle that the State may not promote its own economic advantages by curtailment or burdening of interstate commerce." *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 531-32 (1949). Thus, even local health or safety measures which impose upon interstate commerce a burden disproportionate to the benefits of that legislation to the interests it purports to serve, may be declared invalid under the Commerce Clause.[27] There-

[27] *See* Southern Pacific Co. v. State of Arizona *ex rel.* Sullivan, *supra*, for an example of invalid state legislation. In that case, a train length limit on interstate trains was invalidated upon a showing that its adverse impact on the efficiency and economy of interstate transportation outweighed its marginal value as a safety measure.

fore, plaintiff's challenge to the 1974 amendment based upon its claimed unconstitutional conflict with the Commerce Clause must be cautiously evaluated.

"One challenging the validity of a state enactment on the ground that it is repugnant to the commerce clause is not necessarily bound by the legislative declarations of purpose. It is open to him to show that in their practical operation its provisions directly burden or destroy interstate commerce. * * *" *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 5, 10 (1928). In *Dean Milk Co. v. Madison*, 340 U.S. 349 (1951), the Court upheld a challenge to an ordinance of the City of Madison, Wisconsin which prohibited the sale of milk as pasteurized unless that milk was pasteurized and bottled within five miles of the City's central square. In response to the City's argument that the ordinance was aimed simply at protecting the health of the community, Mr. Justice Clark noted (at 354) that to sustain an ordinance simply because it denominates itself "a health measure, would mean that the Commerce Clause of itself imposes no limitations on state action other than those laid down by the Due Process Clause, save for the rare instance where a state artlessly discloses an avowed purpose to discriminate against interstate goods. * * *" Since the practical effect of the ordinance challenged in *Dean Milk* was to protect local industry, the Court struck down the ordinance.

Additionally, any evaluation of the validity of the impact of a state statute upon interstate commerce depends not only upon the strength of local interests, but whether those interests can be promoted by other means. It is perhaps thus well to repeat Mr. Justice Stewart's statement in *Pike v. Bruce Church, Inc.*, 397 U.S. *supra* at 142, quoted at p. 25, *supra*, that—

> * * * the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. * * *

To the same effect, *see Dean Milk Co. v. Madison,* 340 U.S. *supra* at 354, in which the Court stated that a statute erecting barriers to out-of-state competition is invalid "if reasonable nondiscriminatory alternatives, adequate to conserve legitimate local interests, are available. * * *"

Further, a state may not permissibly require "an out-of-state operator to become a resident in order to compete on equal terms". *Halliburton Oil Well Cementing Co. v. Reily,* 373 U.S. 64, 72 (1963). *See also Pike v. Bruce Church, Inc.,* 397 U.S. *supra* at 138, in which, in order to implement an Arizona statute which, *inter alia,* regulated packaging of all cantaloupes grown in Arizona, an Arizona official issued an Order "prohibiting" Bruce Church, Inc. "from transporting uncrated cantaloupes" from Arizona to California "for packaging and processing." The effect of that prohibition was that the company, in order to continue in its business, would have been required to erect packing facilities within Arizona at a substantial additional cost. Because the burden that prohibition placed upon interstate commerce was not deemed outweighed by Arizona's interest in identifying the source of the fruit, that prohibition was declared invalid. In his opinion for the Court, Mr. Justice Stewart declared (at 145) that—

> * * * the Court has viewed with particular suspicion state statutes requiring business operations to be performed in the home State that could more efficiently be performed elsewhere. Even where the State is pursuing a clearly legitimate local interest, this particular burden on commerce has been declared to be virtually per se illegal. Foster-Fountain Packing Co. v. Haydel, 278 U.S. 1 [1928] * * *.

Mr. Justice Stewart concluded (at 146) that Arizona's "interest" in what it was seeking to accomplish was too "minimal" to permit it to burden Bruce Church to the extent involved.

In *H. P. Hood & Sons, Inc. v. Du Mond,* 336 U.S. *supra,* Mr. Justice Jackson, after stating (at 533) that a

"* * * distinction between the power of the State to shelter its people from menaces to their health or safety and from fraud, even when those dangers emanate from interstate commerce, and its lack of power to retard, burden or constrict the flow of such commerce for their economic advantage, is one deeply rooted in both our history and our law", noted (at 535) that the Supreme Court had "consistently . . . rebuffed attempts of states to advance their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state, while generally supporting their right to impose even burdensome regulations in the interest of local health and safety." Pursuant to that reasoning, the Supreme Court has also invalidated state laws which have placed local business in a position of economic isolation from competition with the products or labor of other states, *see, e.g., Polar Ice Cream & Creamery Co. v. Andrews,* 375 U.S. 361, 377 (1964), holding invalid Florida regulations having the effect of requiring Florida milk distributors to accept milk from local producers.

There is a line of authority which holds that a state can preserve for and allocate to its own citizens "common property" belonging to them. *See McCready v. Virginia,* 94 U.S. 391, 395-97 (1877), dealing with Virginia's oysters. But there are tight limitations woven around that doctrine. *See Toomer v. Witsell,* 334 U.S. 385, 404-06 (1948) (Vinson, C.J.; and at 408, Frankfurter, J. concurring for himself and Jackson, J.), in which a South Carolina statute was held repugnant to the Commerce Clause; and *Foster-Fountain Packing Co. v. Haydel,* 278 U.S. *supra* at 11, in which Mr. Justice Butler, in the course of similarly invalidating a Louisiana statute, wrote (at 13):

> * * * As the representative of its people, the state might have retained the shrimp for consumption and use therein. But, in direct opposition to conservation for intrastate use, this enactment permits all parts of the shrimp to be shipped and sold outside the state. The purpose is not to retain the shrimp for the use of the people of Louisiana; it is to favor the canning of the meat and the

> manufacture of bran in Louisiana by withholding raw or unshelled shrimp from the Biloxi plants.
> * * *

And in this case, even if by some stretch of the imagination the bounty payments can be deemed "common property", similar to the oyster beds in *McCready,* or the shrimp in *Toomer* and *Foster-Fountain,* it is to be noted that the Maryland abandoned auto program as originally commenced in 1969 did not treat the bounties as "common property" which Maryland was going to distribute to Marylanders only, and that that program began to prefer Marylanders only when the 1974 amendment was adopted.

The foregoing principles establish the repugnancy of the 1974 amendment to the Commerce Clause of the federal Constitution. The effect of that amendment is substantially to burden the flow of interstate commerce by promoting the economic advantages of scrap processors with plants in Maryland, who alone, pursuant to that amendment, may receive bounties on inoperable vehicles in excess of eight years of age without any requirement that their suppliers have complied with procedures inevitably comsumptive of more time and energy than the filing of an indemnity agreement, and who, as contrasted with processors with only out-of-state plants, are statutorily accorded the immunization against suits by owners or alleged owners of the vehicles to the extent provided by such agreements.

As a result of the 1974 amendment, a licensed wrecker desiring to sell an automobile hulk eight years or older and inoperable but not wishing to comply with statutory notice provisions has two simple choices: he may deliver it to a processor such as plaintiff and receive only its scrap value, or he may deliver it to a processor with a Maryland plant and additionally receive a statutory share of the bounty. Similarly, unlicensed wreckers, who, it should be noted, do not have available the notification procedures available to licensed wreckers pursuant to section 5-203(b), or other individuals desiring to sell such a hulk, may deliver the

same to a processor such as plaintiff and receive therefor only its market value; or, they can deliver the same to a processor with an in-state plant who, as a result of the bounty to which he is statutorily entitled, will be able to remit to the deliveror a portion of that bounty. Since the choice between the simple expedient of executing an indemnity agreement and those of the more time-consuming notice procedures will in many, if not all, instances be made by individuals with no interest in maintaining Alexandria Scrap's economic health and a considerable interest in maintaining their own economic health, the choice which will in most instances be made is rather predictable and almost inevitable.

Not only the terms of the 1974 amendment but also the undisputed facts in this case appear to establish that the 1974 amendment has since its enactment imposed substantial burdens upon the free flow of interstate commerce. While, in the current summary judgment posture of this case, the extent to which old cars constitute the lifeblood of the scrap metal industry and the exact percentage of ferrous scrap sold to steel mills represented by vehicles eight years old or older have not been established, the importance of such vehicles to the scrap industry is without doubt substantial. Moreover, it has been stipulated (Stipulation 16) that prior to the 1974 amendment, the police certificate of authority was seldom used to transfer ownership of vehicles eight years and older. While the State disputes plaintiff's contention that it may take as long as three weeks to obtain such certificates, an affidavit of Mr. Harris, the Chief of the MVA's Licensing and Consumers Service Division, indicates that in four of Maryland's counties nearest to Alexandra, Virginia, namely, Charles, Calvert, Prince George's, and Montgomery, such certificates do require approximately seventy-two hours to obtain (Para. 11). Finally, there has been no challenge by defendants to plaintiff's assertion that plaintiff has informed its suppliers of automobile hulks of the proper procedures necessary to obtain Police Certificates of Authority and has provided those suppliers with the forms necessary to obtain the same,

but that since the 1974 amendment those same suppliers are now disposing of their hulks to Maryland processors. Plaintiff, citing figures in support of such contention, claims that the 1974 amendment has "drastically altered the market in eight year old or older motor vehicles formerly titled in Maryland." (Affidavit of Defendant, Para. 12). Plaintiff's own figures appear to some extent to indicate that plaintiff has in some measure been able to replace some of the business it has lost subsequent to the 1974 amendment. Still, those figures reflect not only a reshaping of the abandoned vehicle market but a discernible diminution in plaintiff's business. But, again, in the summary judgment posture of this case, plaintiff will herein be given no benefit from such factual proffers. Nevertheless the uncontroverted facts do establish that the 1974 amendment has burdened and continues to burden the free flow of interstate commerce in scrap and that that burden outweighs any local health or safety interests furthered by it. While conservation of state funds vis-a-vis claims for bounty for automobiles abandoned outside Maryland, as well as full assurance that participants in that State's bounty program are appropriate subjects for regulation under its laws, pose clearly legitimate state legislative goals, the facts in this case are that those goals are not and cannot be rationally achieved or advanced by the 1974 amendment. Rather, not only does that amendment effectively protect scrap processors with existing plants in Maryland from the pressures of competitors with nearby out-of-state plants, but it implicity offers to extend similar protection to any competitor who is willing to erect a scrap processing facility within Maryland's boundaries — an offer clearly suspect under Commerce Clause principles. This Court is not bound by the declarations herein by counsel for defendants and other Maryland officials as to the purpose of the Maryland legislature in enacting the 1974 amendment. To begin with, there is no legislative history available. Second, the language of the amendment speaks for itself. And, in any event, those purported purposes could easily have been and indeed still could be accomplished by the simple,

nondiscriminatory expedient of denying bounty payments to any processor for any vehicle abandoned outside of Maryland's geographical limits. In sum, the legislation challenged herein cannot survive attack under the Commerce Clause any more than it can withstand challenge under equal protection principles.

V. Relief

The words "whose plant is physically located and operating in this State", as they presently appear in section 11-1002.2(f)(5), shall not hereafter be given any force or effect.[28] Defendants are hereby enjoined from otherwise enforcing that section of the law as presently enacted. An appropriate Order will be filed today in this case.

Plaintiff's motion for summary judgment is hereby granted. Defendants' motion for summary judgment is hereby denied.

Harrison L. Winter,
United States Circuit Judge,
Frank A. Kaufman,
United States District Judge,
James R. Miller, Jr.,
United States District Judge.

ORDER

The Court having filed an opinion of even date herewith in the above entitled case concluding that 6 Md. Ann. Code art. 66½, § 11-1002.2(f)(5) (1974 Cum. Supp.), as presently enacted, is invalid in that it denies equal protection of the laws and constitutes an undue burden on interstate commerce, Now, Therefore, it is ORDERED, ADJUDGED and DECREED, this *12th* day of March, 1975, that the defendants, their agents, servants and employees and all persons acting in concert with them, are hereby enjoined from restricting the application of that section of the law to scrap

[28] That method of relief would appear in accord with Maryland's general severability statute. 1 Md. Ann. Code art. 1, § 23 (1974 Cum. Supp.).

processors "whose plant is physically located and operating in this State", and from otherwise giving force and effect in any manner to said words as they appear in said section.

HARRISON L. WINTER,
United States Circuit Judge,
FRANK A. KAUFMAN,
United States District Judge,
JAMES R. MILLER, JR.,
United States District Judge.

In the United States District Court
for the District of Maryland

Civil Action No. K-74-1030

Alexandria Scrap Corporation,
Plaintiff,

v.

Harry R. Hughes, Secretary of Transportation of Maryland, et al.,
Defendants.

NOTICE OF APPEAL

Notice is hereby given that, pursuant to 28 U.S.C. § 1253, Harry R. Hughes, et al., defendants named and referred to above, hereby appeal to the Supreme Court of the United States from the Order enjoining defendants from restricting the application of Maryland Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, § 11-1002.2(f)(5), "to scrap processors 'whose plant is physically located and operating in this State,' and from otherwise giving force and effect in any manner to

said words as they appear in said section," entered in this action on March 12, 1975.

FRANCIS B. BURCH,
Attorney General of Maryland,
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GLENN E. BUSHEL,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 24th day of April, 1975, a copy of the foregoing NOTICE OF APPEAL was mailed, postage prepaid, to Carl E. Eastwick, Esquire, Semmes, Bowen & Semmes, 10 Light Street, Baltimore, Maryland 21202, in accordance with U.S. Supreme Court Rules 10 and 33(3)(c).

GLENN E. BUSHEL,
Assistant Attorney General,
Attorney for Defendants.

Filed: April 25, 1975

APPENDIX

Supreme Court, U. S.
FILED
NOV 20 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,

Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

APPEAL FILED JUNE 20, 1975
PROBABLE JURISDICTION NOTED
OCTOBER 6, 1975

The Daily Record Co., Baltimore, Md. 21202

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APPENDIX

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RELEVANT DOCKET ENTRIES

9/23/74—(1) Complaint and attachment.

9/24/74—(2) Summons issued.

10/16/74—(3) Motion of Defendants to Dismiss.

10/16/74—(4) Memorandum in Support of Motion to Dismiss and Exhibits.

12/2/74—(5) Plaintiff's request for hearing, Memorandum in opposition to Defendant's Motion to Dismiss, and Exhibits.

12/6/74—(6) Motion of plaintiff for preliminary injunction.

12/6/74—(7) Motion for plaintiff for three-judge court.

1/13/75—(9) Designation (Haynsworth, C. Cir. J.) of a Three Judge Court.

1/16/75—(10) Stipulation of facts between parties and attachment.

1/20/75—(11) Affidavit of Isadore Gittleson.

1/23/75—(12) Affidavit of Thomas E. Harris.

2/14/75—Hearing on Motion of Defendant to Dismiss.

2/14/75—Argued and held sub-curia.

3/12/75—(13) Opinion of Court.

3/12/75—(14) Order.

3/12/75—(15) Judgment.

4/25/75—(20) Notice of Appeal of Defendants to the Supreme Court of the United States.

WHAT MAY BE FOUND IN THE APPENDIX TO THE JURISDICTIONAL STATEMENT

The following three items may be found in the Appendix to Jurisdictional Statement which was filed with the Jurisdictional Statement: 1. The Opinion of the District Court; 2. The District Court's Order; and, 3. The Appellants' Notice of Appeal, filed April 25, 1975.

Note that the pagination in the Appendix to Jurisdictional Statement is in the form "1a, 2a, 3a, . . .," while the pagination in this Appendix is in the form "1A, 2A, 3A, . . ."

COMPLAINT

The plaintiff, Alexandria Scrap Corporation, a Virginia corporation, by its undersigned attorneys, files this Complaint for declaratory and injunctive relief, as follows:

1. This action arises under the Constitution of the United States, Article I, Section 8, Clause 3 (Commerce Clause) and Section 1 of the Fourteenth Amendment to the Constitution of the United States (Equal Protection Clause) as hereinafter more fully appears. Plaintiff is a corporation incorporated under the laws of the Commonwealth of Virginia having its principal place of business in the Commonwealth of Virginia and defendants are citizens of the State of Maryland. This action is for an injunction pursuant to the provisions of 28 U.S.C., Sections 2281 and 2284, and for declaratory relief pursuant to the provisions of 28 U.S.C., Sections 2201 and 2202. This Court has jurisdiction of this civil action pursuant to the provisions of 28 U.S.C., Sections 1331, 1332, and 1343. The matter in controversy exceeds the sum of ten thousand dollars, exclusive of interest and costs.

2. The plaintiff, Alexandria Scrap Corporation, is engaged in interstate commerce in the business of processing iron, steel, and nonferrous scrap metal into scrap iron, steel, and nonferrous scrap for sale for resmelting. Plaintiff's processing plant and principal place of business is physically located in the City of Alexandria, Commonwealth of Virginia. Plaintiff has no processing plant in Maryland but maintains an office at 302 Ellsworth Drive, Silver Spring, Maryland.

3. Plaintiff is a "scrap processor" as that term is defined in Section 5-201.1(a) of Article 66½, Annotated Code of Maryland (hereinafter referred to by Section and Article) in that it is an establishment having facilities for processing iron, steel, and nonferrous scrap metal and whose principal produce is scrap iron, steel,

and nonferrous scrap for sale for resmelting purposes. Plaintiff is licensed as a scrap processor by the Maryland Motor Vehicle Administration under Section 5-202 of Article 66½, and has been so licensed continuously since 1970. Plaintiff has participated in the "bounty program" established by Section 5-205 since that program's inception in 1970.

4. Defendant Harry R. Hughes is the Secretary of Transportation of the State of Maryland and is responsible for the operation of the Maryland Department of Transportation, of which the Maryland Motor Vehicle Administration is a part.

5. Defendant Ejner J. Johnson is the Administrator of the Maryland Motor Vehicle Administration and, subject to the authority of the Secretary of Transportation, is responsible for carrying out the powers, duties, responsibilities and functions vested by law in the said Administration.

6. Defendant Charles J. Pfaff is the Deputy Administrator for Operations of the Maryland Motor Vehicle Administration appointed by the Administrator of said Administration subject to the approval of the Maryland Secretary of Transportation. Defendant Pfaff supervises the operation of various Divisions of said Administration, including the Division of Vehicle Registration.

7. Defendant Nance J. Stamboni is the Director of the Division of Vehicle Registration, whose duties include the licensing and regulation of auto wreckers and scrap processors in the State of Maryland.

8. Under the provisions of Section 5-201 of Article 66½, it is unlawful for any person, firm, or corporation to engage in operations incident to the business of scrap metal processing in Maryland or to be eligible to receive the fee or bounty more fully set out in paragraph 11 herein without first having obtained a license as a "scrap processor" as defined in Section 5-201.1 of Article 66½. Through Section 11.02.05.45 of the Rules and Regulations of the Maryland Motor Vehicle Administration, that Administration, in the exercise of its administration discretion, has licensed scrap processors whose plants are physically located and operating outside the State of Maryland, in addition to scrap processors with plants located within the State of Maryland.

9. The plaintiff, a licensed scrap processor, is engaged in interstate commerce. A substantial portion of its business is derived from processing abandoned and inoperable motor vehicles acquired from sources located in the State of Maryland, including wreckers (as defined by Section 5-201.1(b) of Article 66½) which are licensed under the provisions of Section 5-202 of Article 66½ and motor vehicle towers which are not so licensed. These abandoned and inoperable vehicles are transported by wreckers and towers in interstate commerce from locations within Maryland to the plaintiff's plant in Virginia. Plaintiff processes such abandoned and inoperable vehicles at its Virginia plant and then sells the major portion of the processed scrap iron, steel, and nonferrous scrap to purchasers, some of whose principal places of business are located outside the boundaries of the Commonwealth of Virginia.

10. As a licensed scrap processor, the plaintiff is authorized to acquire abandoned or inoperable vehicles for which there is a certificate of title. In the absence of a certificate of title, the plaintiff as a licensed scrap processor may acquire an abandoned or inoperable vehicle without such certificate only in conformity with one or more of the following procedures:

(a) Acquisition from a licensed wrecker which has assumed free and clear title to such vehicle under Section 5-203(c) of Article 66½ following compliance with the notification procedures set forth in said Section.

(b) Acquisition from a licensed wrecker or tower or other third party which has applied to the police department of the jurisdiction in which the vehicle is situated for a certificate of authority to sell such motor vehicle for demolition, wrecking or dismantling pursuant to the provisions of Section 11-1002.2(f) of Article 66½. Following notification procedures set forth in subsections (a) and (b) of said Section 11-1002.2, and

upon issuance of the police certificate of authority, the plaintiff as a licensed scrap processor may acquire such vehicle on the basis of such police certificate in lieu of the certificate of title.

(c) Acquisition from a licensed wrecker or tower or other third party pursuant to the provisions of Section 11-1002.2(f)(5) of Article 66½ of an abandoned or inoperable vehicle for which there is no title and without notification procedures if such vehicle is over eight years old and has no engine or is otherwise totally inoperable.

11. In accordance with Section 5-205 of Article 66½, the Maryland Motor Vehicle Administration is required to pay a fee or bounty of sixteen dollars ($16.00) for each abandoned or inoperable motor vehicle formerly titled in Maryland which has been completely destroyed by a licensed scrap processor, upon presentation to the Administration of the certificate of title or other acceptable evidence of ownership for such vehicle; the manufacturer's serial or identification number plate; satisfactory proof that the vehicle has been completely destroyed, and any other information which the Administration may deem necessary. The Administration is required by said Section 5-205 to disburse one half of this fee or bounty ($8.00) to the licensed scrap processor and the other half ($8.00) to the licensed wrecker conveying ownership to the scrap processor of the vehicle to be destroyed.

12. As a licensed scrap processor, the plaintiff has received fees or bounties from the Administration for the destruction of motor vehicles formerly titled in Maryland and delivered in interstate commerce from locations in Maryland to its plant in Virginia by wreckers licensed by the Administration and by towers which are not so licensed.

13. Prior to July 1, 1974, a substantial portion of the vehicles so delivered in interstate commerce and destroyed by the plaintiff consisted of vehicles over eight years old having no engine or otherwise totally inoperable and for which there were no certificates of title and which were acquired without notification

procedures set forth in Sections 5-203 or 11.1002.2 (a) and (b) of Article 66½ (as described in paragraph 10 herein). Until that date, the Administration has paid a fee or bounty to the plaintiff for all such vehicles delivered and destroyed (and also to the licensed wrecker, if any, delivering such vehicles to the plaintiff), thereby encouraging and facilitating interstate commerce.

14. Effective July 1, 1974, by virtue of Chapter 465 of the Laws of Maryland (a copy of which is attached hereto and made a part hereof), Section 11-1002.2(f)(5) of Article 66½ was repealed and reenacted, with amendments. Under said Section, as amended, a licensed scrap processor may continue to acquire a motor vehicle without title or notification procedures if such vehicle is over eight years old and has no engine or is otherwise inoperable. In such cases, however, a scrap processor whose plant is physically located and operating in Maryland is required to execute an indemnity agreement (containing the name, address, and signature of the wrecker, tower or other person delivering such abandoned and inoperable vehicle) and to file the indemnity agreement with the Administration, which indemnity agreement and the manufacturer's serial or identification number constitutes satisfactory proof that the vehicle has been destroyed and shall be acceptable for payment of the full fee or bounty authorized by Section 5-205 of Article 66½ if such vehicle was formerly titled in Maryland.

15. Section 11-1002(f)(5) of Article 66½, as amended, further provides that abandoned and inoperable vehicles delivered to a scrap processor shall not qualify for the fee or bounty authorized by Section 5-205 of Article 66½ in the absence of an indemnity agreement.

16. In consequence of Section 11-1002.2(f)(5) of Article 66½, as amended, the Administration is authorized to pay and does pay the full bounty authorized by Section 5-205 of Article 66½ to licensed scrap processors for the destruction of motor vehicles delivered in accordance with said Section 11-1002.2(f)(5), as amended, and to licensed wreckers delivering such vehicles but only if

such vehicles are delivered to and destroyed by licensed scrap processors having plants physically located and operating in Maryland which have filed indemnity agreements with the administration. The indemnity agreement procedures set forth in Section 11-1002(f)(5), as amended, are not available to out-of-state licensed scrap processors, including plaintiff, which do not have plants physically located and operating in Maryland. Under the terms of said Section, as amended, since July 1, 1974, and continuing to the present time, neither the plaintiff nor licensed wreckers delivering to the plaintiff in interstate commerce can obtain fees or bounties with respect to abandoned or inoperative motor vehicles formerly titled in Maryland, unless the plaintiff is able to obtain a certificate of title or a police certificate of authority issued as a result of time-consuming and burdensome notification procedures. Section 11-1002(f)(5), as amended, thereby places a burden on plaintiff and other out-of-state scrap processors which destroy totally inoperable vehicles which were formerly titled in Maryland and which are disposed of in accordance with that Section, which burdens are not imposed on scrap processors whose plants are physically located and operated in the State of Maryland. The imposition of such burdens has the effect of descreasing plaintiff's ability to collect the fees or bounties payable upon the total destruction of totally inoperable motor vehicles which were formerly titled in Maryland and which were over eight (8) years old.

17. Section 11-1002.2(f)(5), as amended, validates indemnity agreements between scrap processors whose plants are physically located and operated within Maryland and a person delivering to that scrap processor a totally inoperable motor vehicle over eight (8) years old and formerly titled in Maryland. Said Section permits only Maryland scrap processors to file "indemnity agreements" with the Administration. The purpose and effect of these said "indemnity agreements" is to protect and indemnify said in-state scrap processors from claims and losses incurred as the result of said processors' acceptance of motor vehicles without

titles or with titles of doubtful or no validity, and to immunize said in-state processors from any civil or criminal liability which may attach as a result of the act of accepting said vehicles. Said protection, indemnification, and immunization is not extended to out-of-state licensed scrap processors doing business in Maryland.

18. In addition to the plaintiff's relative burden in collecting the fees and bounties authorized by Section 5-205, as compared to in-state scrap processors, Section 11-1002.2(f)(5), as amended, imposes additional burdens on the plaintiff's ability to acquire totally inoperable vehicles formerly titled in Maryland from licensed wreckers located in Maryland. Because the plaintiff is not permitted to file executed indemnity agreements with the Administration, licensed wreckers with such vehicles cannot obtain a fee or bounty for delivery of such vehicles to the plaintiff without first obtaining title or exhausting notification procedures which are a prerequisite to obtaining a police certificate. Moreover, because the plaintiff is not permitted to file executed indemnity agreements with the Administration, licensed wreckers cannot obtain statutory indemnity or immunity with respect to inoperable vehicles delivered to the plaintiff. As a consequence of Section 11-1002.2(f)(5), as amended, each licensed wrecker which would otherwise deliver such vehicles to plaintiff in interstate commerce is deterred and discouraged from doing so because it is denied fees or bounties for delivery of such vehicles (unless it submits to the administrative inconvenience and delay of notification procedures) and is further denied the statutory protection and immunity conferred by indemnity agreements filed with the Administration. By discouraging licensed wreckers from delivering to the plaintiff, said Section constitutes a substantial burden upon interstate commerce and deprives the plaintiff and other out-of-state scrap processors of a vital source of scrap iron, steel, and nonferrous scrap which normally moved in interstate commerce, prior to the reenactment of (with amendments to) such Section.

19. Conversely, Section 11-1002.2(f)(5), as amended, of Article 66½, arbitrarily discriminates against the plaintiff in that licensed scrap processors having plants physically located and operating in Maryland — unlike the plaintiff and to its exclusion — are empowered by said Section to execute indemnity agreements with licensed wreckers, and thereby eliminate the need to comply with burdensome notice procedures; to execute indemnity agreements which provide licensed wreckers with statutory protection and immunity against claims with respect to vehicles delivered to such Maryland scrap processors, thereby enabling such Maryland processors to insulate wreckers against risk claims and liability; to guarantee to such wreckers the prompt payment of the fee or bounty authorized by Section 5-205 by filing of the indemnity agreement with the Administration, thereby enabling Maryland scrap processors to provide financial inducements to licensed wreckers while depriving the plaintiff of the ability to provide same. In consequence of said Section, the plaintiff is placed at a severe competitive and economic disadvantage with Maryland scrap processors because of the arbitrary diversion of abandoned and inoperative vehicles away from the normal channels of interstate commerce. Furthermore, said Section immunizes Maryland scrap processors from liability to owners, lienholders, and claimants of vehicles delivered by licensed wreckers pursuant to indemnity agreements filed with the Administration, while denying such protection to plaintiff and other out-of-state scrap processors which are not authorized to execute and file such agreements with the Administration.

20. Section 11-1002.2(f)(5), as amended, imposes additional burdens on the plaintiff's ability to acquire abandoned and inoperative vehicles from other sources located in the State of Maryland. In addition to acquiring such vehicles from licensed wreckers, the plaintiff and other licensed scrap processors (located both out-of-state and in-state) customarily acquire such vehicles from towers and other third parties which are not licensed by the Administration to engage in the

business of automobile wrecking. A substantial portion of the plaintiff's business consists of the destruction and processing of vehicles acquired in interstate commerce from towers and other third persons in Maryland (as distinguished from licensed wreckers). Section 11-1002.2(f)(5), as amended, protects and immunizes Maryland scrap processors from legal liability and affords Maryland scrap processors a means of receiving payment of the prescribed fees or bounties with respect to vehicles delivered by such towers and third persons, whereas the said Section denies such immunity and denies fees or bounties to the plaintiff and other out-of-state scrap processors. In addition, said Section enables Maryland scrap processors to execute indemnity agreements which provide towers and other third persons with statutory protection and immunity against claims with respect to vehicles delivered to such scrap processors, but denies such statutory protection and immunity with respect to vehicles delivered to plaintiff and other out-of-state scrap processors. Furthermore, under Section 11-1002.2(f)(5), as amended, Maryland scrap processors which receive the fee or bounty paid to them by the Administration customarily and voluntarily remit a portion of such fee or bounty to towers as an inducement for the delivery of eligible motor vehicles to them. As a result of said inducements, towers are deterred and discouraged from delivering eligible motor vehicles in interstate commerce to the plaintiff and other out-of-state licensed scrap processors, which are denied the use of the indemnity agreement and are ineligible to receive any fee or bounty. Consequently, the said Section constitutes a substantial burden upon interstate commerce and deprives the plaintiff and other out-of-state processors of a vital source of scrap, iron, steel, and nonferrous scrap which normally moved in interstate commerce, prior to the reenactment (with amendments) of such Section.

21. Section 11-1002.2(f)(5), as amended, of Article 66½ imposes unequal burdens on out-of-state scrap processors such as plaintiff in their efforts to procure fees and

bounties for the destruction of automobiles formerly titled in Maryland and discourages Maryland motor vehicle wreckers and towers from delivering totally inoperative motor vehicles to out-of-state scrap processors such as plaintiff and is, therefore, unconstitutional and void as repugnant to the provisions of Article I, Section 8, Clause 3 of the Constitution of the United States for the following reasons, among others:

(a) Said Section 11-1002.2(f)(5), as amended, is a direct and indirect burden on licensed scrap processors engaged in interstate commerce and doing business in the State of Maryland, and

(b) Said Section 11-1002.2(f)(5), as amended, works an unreasonable discrimination in favor of Maryland scrap processors and against out-of-state licensed scrap processors doing business in the State of Maryland by erecting barriers to interstate commerce.

22. Said Section 11-1002.2(f)(5), as amended, is unconstitutional and void, and in direct conflict with the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States for the reason that the said statute enables scrap processors whose plants are located and operating in Maryland to obtain statutory protection and immunity from any liability which may arise from certain transactions (and to confer such protection and indemnity upon other parties to such transactions) and denies out-of-state scrap processors doing business in Maryland that same means for obtaining (and conferring) such protection and immunity from liability which may accrue as the result of the same sort of transaction.

23. The acts of the defendants, by administering and enforcing said Section in the manner described herein, have created an existing dispute between the parties as to plaintiff's present legal rights and amount to a justiciable controversy, the final and complete resolution of which may be achieved by a judgment declaring the plaintiff's rights pursuant to the provisions of 28 U.S.C., Sections 2201 and 2202.

24. Plaintiff is entitled to have this cause heard and determined by a three-judge court pursuant to the provisions of 28 U.S.C. Sections 2281, et seq. The acts of the defendants pursuant to the provisions of Section 11-1002.2(f)(5), as amended, of Article 66½ are repugnant to the Constitution of the United States and may be enjoined only after a hearing and determination of the merits of this cause by a court of three judges convened pursuant to the provisions of Title 28 U.S.C., Section 2284.

25. There is no remedy other than by this action in this Court by which the plaintiff can receive equitable and just relief, and there exists no adequate remedy at law from preventing the harm to plaintiff which will continue to flow from the administration of the challenged statute.

WHEREFORE, the plaintiff prays:

1. That a declaratory judgment be entered decreeing that said Section 11-1002.2(f)(5), as amended, is unconstitutional and void as being repugnant to the Commerce Clause of Article I, Section 8, Clause 3 of the Constitution of the United States and that said statute be held void on its face and as applied to plaintiff;

2. That a declaratory judgment be entered decreeing that Article 66½, Ann. Code Md., Section 11-1002.2(f)(5), as amended, is unconstitutional and void as being repugnant to the Equal Protection Clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States and that said statute be held void on its face and as applied to plaintiff.

3. That the defendants, their successors in office, their agents, their employees, their attorneys and each and everyone of them, be:

(a) Mandatorily compelled to accept indemnity agreements entered into by the plaintiff and other licensed scrap processors whose plants are located outside the geographic limits of the State of Maryland and to give such agreements the same effect (including payment of the fee or bounty authorized by Section 5-

205) as is given such agreements entered into by licensed scrap processors whose plants are located and operated within the geographic boundaries of the State of Maryland; and

(b) Preliminarily and permanently enjoined from withholding from or refusing to pay to the plaintiff or to any licensed wrecker delivering to the plaintiff any fee or bounty which would be ordinarily payable under Section 5-205 of Article 66½ for an abandoned and inoperable motor vehicle delivered and destroyed under the provisions of Section 11-1002.2(f)(5) if destroyed by a licensed scrap processor having a plant located and operating in Maryland; or, in the alternative, preliminarily enjoined from making payment of any fee or bounty to any licensed scrap processor or licensed wrecker under said Section 5-205 in consequence of any motor vehicle delivered and destroyed pursuant to said Section 11-1002.2(f)(5); and

(c) Preliminarily and permanently enjoined from enforcing or administering said Section 11-1002.2(f)(5) to the extent that it confers upon any scrap processor "whose plant is physically located and operating in this State" the authority to execute and file indemnity agreements and to obtain payment of fees or bounties pursuant thereto, but withholds or denies such authority to out-of-state scrap processors; and

(d) Preliminarily and permanently enjoined from enforcing or administering said Section 11-1002.2(f)(5), as amended, in any manner as to discriminate against and to impose burdens upon plaintiff in favor of licensed scrap processors having plants located and operated within the geographic boundaries of the State of Maryland, or in any other manner inconsistent with the declaratory or injunctive relief which may be granted to the plaintiff in this action.

4. That plaintiff be awarded the costs of this action, and;

5. For such other and further relief as this Court may deem just and proper in the premises.

NORMAN P. RAMSEY,
H. THOMAS HOWELL,
CARL E. EASTWICK,
SEMMES, BOWEN & SEMMES,
Attorneys for Plaintiff.

CHAPTER 465

(House Bill 782)

AN ACT concerning

Abandoned Vehicles — Scrap Processors

FOR the purpose of protecting *certain* scrap processors who destroy certain abandoned motor vehicles by authorizing them to file an indemnity agreement with the Motor Vehicles Administration and relating generally to disposition of abandoned motor vehicles.

BY repealing and re-enacting, with amendments;

Article 66½ — Vehicle Laws
Section 11-1002.2(f)(5)
Annotated Code of Maryland
(1970 Replacement Volume and 1973 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section 11-1002.2(f)(5) of Article 66½ — Vehicle Laws, of the Annotated Code of Maryland (1970 Replacement Volume and 1973 Supplement) be and it is hereby repealed and re-enacted, with amendments, to read as follows:

Article 66½ — Vehicle Laws

11-1002.2.

(f) (5) Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any

person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is [[other]] OTHERWISE totally inoperable. IN THOSE CASES ONLY, A SCRAP PROCESSOR WHOSE PLANT IS PHYSICALLY LOCATED AND OPERATING IN THIS STATE SHALL [[MAY]] EXECUTE AN INDEMNITY AGREEMENT THAT SHALL BE FILED WITH THE MOTOR VEHICLE ADMINISTRATION. THE INDEMNITY AGREEMENT SHALL CONTAIN THE NAME, ADDRESS AND SIGNATURE OF THE PERSON DELIVERING THE VEHICLE. THE INDEMNITY AGREEMENT AND THE MANUFACTURERS SERIAL OR IDENTIFICATION NUMBER SHALL BE SATISFACTORY PROOF THAT THE VEHICLE HAS BEEN DESTROYED AND SHALL BE ACCEPTABLE FOR PAYMENT OF THE FULL BOUNTY AUTHORIZED BY SECTION 5-205 IF THE VEHICLE IDENTIFIED IN THE INDEMNITY AGREEMENT WAS TITLED IN THIS STATE. OTHERWISE, FOR THE PURPOSE OF ADMINISTERING THE PROVISIONS OF THIS SECTION, THE PROVISIONS OF SECTION 5-205 SHALL NOT APPLY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1974.

Approved April 30, 1974.

* * * * * *

APPENDIX I

MOTOR VEHICLE LAWS OF MARYLAND

Article 66½

Annotated Code of Maryland

PART II. WRECKERS AND SCRAP PROCESSORS

5-201. WRECKERS AND SCRAP PROCESSORS MUST BE LICENSED.

It is unlawful for any person, firm, or corporation, on and after January 1, 1970, to store any vehicle, or body or chassis thereof, which is to be scrapped, dismantled, or destroyed, on any private property for a period in excess of thirty days, unless the person, firm, or corporation is licensed as a wrecker, as hereinafter provided, or operates an establishment as a scrap processor.

From and after January 1, 1970, licenses for scrap processors and wreckers shall be issuable only to those persons, firms, or corporations as those terms are defined in Subsection 5-201.1.

5-201.1. DEFINITION OF "WRECKER" AND "SCRAP PROCESSOR."

(a) "Scrap processor" means an establishment having facilities for processing iron, steel and nonferrous scrap metal and whose principal product is scrap iron, steel and nonferrous scrap for sale for resmelting purposes only which is licensed under the provisions of this part.

(b) "Wrecker" means every person, firm, or corporation engaged in the business of purchasing or otherwise acquiring vehicles for the benefit of the materials contained therein or parts thereof.

5-202. APPLICATION AND OTHER REQUIREMENTS FOR LICENSE.

No wrecker or scrap processor shall be entitled to obtain a license unless:

(1) Application for a license shall be made to the Department on forms prescribed by it.

(2) The applicant's said business is conducted at a fixed location;

(3) The applicant's storage area is sufficient to accommodate at least twenty-five (25) vehicles to be scrapped, dismantled, or destroyed;

(4) The applicant maintains a substantial office in which books of account and records of such business are kept;

(5) The applicant has erected a substantial and legible sign, in a location on the site of the place of business readily seen by the public, advertising the type of business conducted at such location;

(6) The fee of $15 is paid to the Department for the issuance of such wrecker's license and a fee of $100 is paid to the Department for the issuance of such scrap processor's license. Said licenses to be renewed annually;

(7) A copy of the application shall be submitted to the State Department of Health for its comments on matters pertaining to air pollution and health generally.

(8) In the case of a scrap processor, he maintains a hydraulic baler and shears, or a shredder, or such other equipment suitable for processing motor vehicle scrap as required by regulation of the Department.

5-203 NOTIFICATION OF ACQUISITION OF VEHICLES AND ASSESSMENT FOR VEHICLES NOT DESTROYED.

(a) *Notice of Acquisition of Vehicle.*—Every wrecker engaged in the business of purchasing or otherwise acquiring vehicles for the purpose of scrapping,

dismantling, or destroying, shall notify the Administration of the acquisition of such vehicles upon forms prescribed by the Administration within thirty (30) days of the date of acquiring such vehicles.

(b) *Notice of Intent to Dispose of Vehicle.*—If a wrecker acquires possession of a vehicle, or body or chassis thereof, for which there is no certificate of title, or certificate of authority and the vehicle, or body or chassis thereof, has been in the possession of the wrecker for a period of more than thirty (30) days, the wrecker shall send a notice of intent to dispose of the vehicle, or body or chassis thereof, at least ten (10) days prior thereto by registered mail to the owner and any lienholder as shown on the records of the Administration or any other person entitled to possession of the vehicle, or body or chassis thereof, if his address is known or can be reasonably obtained.

The provisions of this section which relate to the period of possession of a vehicle and the notification procedure shall not apply to abandoned vehicles which are over eight (8) years old and are totally inoperable.

(c) *When Wrecker May assume Ownership of Vehicle without Certificate of Title.*—If the owner of the vehicle, or body or chassis thereof, or any other person entitled thereto, or any leinholder having an interest therein fails to recover or claim the vehicle, or body or chassis thereof, within the ten (10) day period specified in the aforementioned notice, the wrecker having possession of the vehicle, or body or chassis thereof, shall take and assume free and clear title to the said vehicle, or body or chassis thereof, without the necessity of securing a certificate of title, as is required by the provisions of this article. The assumption of ownership by the wrecker shall be certified on forms prescribed by the Department and forwarded to it within five (5) days from the date ownership has been assumed by the wrecker.

If the address of the owner, leinholder, or any other person entitled to possession of the vehicle, or body or chassis thereof, for which there is no certificate of title,

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cannot be reasonably obtained from the records of the Department, or by the exercise of reasonable diligence, the wrecker having possession of the vehicle or body or chassis thereof shall take and assume free and clear title to the vehicle, or body or chassis thereof, after the aforementioned thirty (30) day period. The assumption of ownership by the wrecker shall be certified on forms prescribed by the Department and forwarded to it within five (5) days from the date ownership was assumed by the wrecker.

(d) *Authority of Department to Prescribe Forms and Promulgate Rules and Regulations.*—The Administration shall prescribe forms and have the authority to promulgate rules and regulations pertaining to the manner in which a wrecker or scrap processor notifies the Administration of receipt of a vehicle or body or chassis thereof to be scrapped, dismantled, or destroyed and the manner in which an assessment is placed upon a wrecker if a vehicle or body or chassis thereof has a designated model year in excess of ten years, as determined by a national publication of used car values adopted for use by the Administration is not scrapped, dismantled, or destroyed within one year from the date a wrecker acquires possession of the vehicle or body or chassis thereof, and the assessment shall be in the amount of $5 for each and every six (6) month period the vehicle or body or chassis thereof remains not scrapped, dismantled, or destroyed. For the purpose of administering this subsection as it relates to assessments, vehicles shall not include trucks, truck tractors or trailers.

5-203.1. CONVEYANCE OF TITLE TO WRECKER OR SCRAP PROCESSOR.

Any owner of a vehicle, or body or chassis thereof, which is to be scrapped, dismantled, or destroyed, who sells or transfers the vehicle, or part thereof, to a wrecker or scrap processor as defined in this article, shall endorse an assignment and warranty of title on the certificate of title for such vehicle, or body or chassis thereof, and deliver the certificate of title at the

time of sale or transfer to the wrecker or scrap processor, whether said certificate of title was issued by this State or any other state.

Any person, firm or corporation holding an assigned certificate of title or any other such evidence of ownership acceptable to the Department for a vehicle to be destroyed, who shall sell or transfer the vehicle to a wrecker or scrap processor, may endorse a reassignment and warranty of title upon forms prescribed by the Department without the necessity of previously securing a certificate of title in the name of the assignee.

5-203.2. SCRAP PROCESSOR NEED NOT OBTAIN TITLE CERTIFICATE.

Any scrap processor who purchases or otherwise acquires a motor vehicle for purpose of wrecking, dismantling, or demolition is not required to obtain a certificate of title for such motor vehicle in his own name. After the motor vehicle has been demolished, processed or changed so that it physically is no longer a vehicle, the scrap processor shall surrender the certificate of title for cancellation or any other evidence of ownership acceptable to the Department. The Department shall issue such forms, rules, and regulations as are appropriate governing the surrender of auction sales receipts and certificates of title.

5-204. SCRAP PROCESSOR TO FORWARD TITLE TO DEPARTMENT.

Every scrap processor, licensed under this article, may forward the certificate of title, issued under this article, upon which an assignment or reassignment and warranty of title has been properly endorsed, or other acceptable evidence of ownership for a vehicle formerly titled in this State, to the Department after the scrap processor has completely destroyed the vehicle described on the certificate of title or evidence of ownership. The Department shall have the right to determine acceptability of such evidence of ownership.

5-205 DEPARTMENT TO PAY FEE FOR VEHICLES TOTALLY DESTROYED.

The Administration shall pay a fee of sixteen dollars ($16.00) for each vehicle which has been completely destroyed upon presentation by the scrap processor to the Administration of the certificate of title or other acceptable evidence of ownership for a vehicle formerly titled in this State, the manufacturer's serial or identification number plate, satisfactory proof that the vehicle has been completely destroyed and any other information the Administration may deem necessary. In all cases where one of the counties of this State or Baltimore City receives reimbursement for a vehicle pursuant to the provisions of Section 11-1002.2 of this Article, the Administration shall pay the above fee even if the vehicle totally destroyed was never titled in this State. The administration shall disburse this fee in the following manner: eight dollars ($8.00) to a scrap processor and eight dollars ($8.00) to the wrecker conveying ownership of the vehicle to be destroyed to such scrap processor. Scrap processors and wreckers must be licensed under this part to be eligible for this fee. No fee shall be paid by the Administration for any vehicle destroyed by any scrap processor prior to July 1, 1970, and the Administration shall require satisfactory evidence confirming the date that such vehicle was destroyed in the form and manner prescribed by the Administration.

5-206. WRECKER AND SCRAP PROCESSOR TO MAINTAIN RECORDS.

A wrecker and a scrap processor shall keep an accurate and complete record of all motor vehicles purchased or received by him in the course of his business. These records shall contain the name and address of the person from whom each motor vehicle was purchased or received and the date such purchases or receipts occurred and such other information that may be required by the Department. The records shall be open for inspection by any police department at any

time during the normal business hours. Any record required by this section shall be kept by the scrap processor for at least three years after the transaction to which applies.

5-207. AUTHORITY OF DEPARTMENT TO PROMULGATE RULES AND REGULATIONS.

The Department may promulgate other rules and regulations and prescribe forms necessary to administer the provisions of this part relating to wreckers and scrap processors.

5-208. STORAGE OF VEHICLES.

It is unlawful for a wrecker to store vehicles for salvage or demolition at a density of more than 250 vehicles for any one acre.

5-209. UNIFORMITY OF PROVISIONS.

It is the sense of the General Assembly that the provisions of this subtitle shall be uniform throughout the State and shall supersede any local law inconsistent herewith.

5-210. VIOLATION OF PART II.

Violation of any of the provisions of this part shall be deemed a misdemeaner.

* * * * * *

PART VI. SUSPENSION AND REVOCATION OF WRECKER'S AND SCRAP PROCESSOR'S LICENSES

5-601. WHEN WRECKER'S OR SCRAP PROCESSOR'S LICENSE MAY BE REFUSED, SUSPENDED, OR REVOKED.

The Department may refuse, suspend, or revoke any license issued under this article relating to wreckers and scrap processors if the Department finds that the licensee is violating any provisions of this article or the

applicable rules and regulations promulgated by it or the State Department of Health.

5-602. HEARING REQUIRED PRIOR TO SUSPENSION OR REVOCATION.

The Department shall suspend or revoke the license of a wrecker or scrap processor only after a hearing. At least ten (10) days prior to the date set for the hearing, the Department shall notify the licensee in writing of any charge made and afford the licensee an opportunity to be heard in person and by counsel in reference thereto. The written notice shall be served by delivery to the licensee by registered mail to the business address of the licensee of record with the Department. The hearing on the charges shall be at time and place the Department prescribes. The Department may subpoena and bring before it any person or documents and take testimony of any person under oath in the manner prescribed in judicial procedure in the courts of this State in civil cases, with the fees and mileage provided by law in civil cases.

5-603. SUSPENSION OR REVOCATION FOR VIOLATION OF ARTICLE.

If the Department determines that any licensee is guilty of any violation of the aforesaid provisions of this article or rules and regulations the authority of the licensee to do business may be revoked or suspended for a period of time determined by the Department.

5-604. APPLICANT FOR LICENSE MAY REQUEST HEARING IF LICENSE REFUSED.

If the license is refused, the applicant, within ten (10) days from the date of notice or refusal is mailed, may request a hearing. The hearing must be held within thirty (30) days of the date of request, and the Department must render a decision within twenty (20) days following the hearing.

* * * * * *

PART X. STOPPING, STANDING AND PARKING

11-1002. ABANDONED OF MOTOR VEHICLE.

Any person who abandons a motor vehicle on any public property or on any property other than his own without the permission of the owner or lessee of such property is guilty of a misdemeanor.

11-1002.1. OFFICERS AUTHORIZED TO REMOVE ABANDONED AND ILLEGALLY STOPPED OR PARKED VEHICLES.

A police department may take into custody any motor vehicle found abandoned. For this purpose, a police department may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities for removing, preserving, and storing abandoned motor vehicles.

11-1002.2. DISPOSITION OF ABANDONED VEHICLES.

(a) *Notice to Last Known Registered Owner.*—A police department which takes into custody an abandoned motor vehicle shall, as soon as reasonably possible and in any event within seven days thereof, by registered mail, return receipt requested, signed by the addressee, notify the last known registered owner of the motor vehicle and all lienholders as shown on the records of the Department that the vehicle has been taken into custody. The notice shall describe the year, make, model, and serial number of the abandoned motor vehicle; set forth the location of the facility where the motor vehicle is being held, inform the owner and any lienholders of their right to reclaim the motor vehicle within three weeks after the date of the notice, upon payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, and state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all lienholders of all right, title, and interest in the vehicle and consent to the sale of the abandoned motor vehicle at a public auction.

(b) *Notice By Publication.*—If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, or if the registered mail notice required by subsection (a) of this section is returned as undeliverable, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this section. The notice by publication may contain multiple listings of abandoned vehicles. Such notice shall have the same contents as those required by registered mail, and shall be published within fifteen days of the taking into custody of the motor vehicle except that in the case of said notice by reason of the return as undeliverable of notice by registered mail the notice shall be published within seven days of such return.

(c) *Effect Of Failure To Reclaim Vehicle.*—The consequences and effect of failure to reclaim an abandoned motor vehicle shall be as set forth in a valid notice given pursuant to subsections (a) and (b).

(d) *Sale; disposition of proceeds.*—If an abandoned motor vehicle has not been reclaimed as provided for in subsections (a) and (b) the police department shall sell it at public auction. The purchaser of the motor vehicle shall take title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department, and shall be entitled to register the purchased vehicle and receive a certificate of title. The sales receipt at such a sale shall be sufficient title only for purposes of transferring the vehicle to a scrap processor for demolition, wrecking, or dismantling, and in such case, no further titling of the vehicle is necessary. From the proceeds of the sale of an abandoned motor vehicle the police department shall reimburse itself for the expenses of the auction, the costs of towing, preservation, and storing the vehicle which resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs

incurred pursuant to subsections (a) and (b), of this section. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lienholder for ninety days, and then shall be deposited with the State Treasurer in the Abandoned Vehicles Fund, as provided for in Subsection 3-830.

Whenever the proceeds of a sale of such other abandoned vehicles are not sufficient to meet the expenses incurred, the Administration shall reimburse the several counties of the State and Baltimore City the sum of ten dollars ($10.00) from the fund established in Subsection 3-830 of this article for each vehicle taken into custody by a county, or Baltimore City, when such vehicle is sold for the purpose of total destruction and when acceptable evidence is presented to the Administration that such vehicle has been totally destroyed.

The reimbursement of expenses from the Abandoned Vehicles Fund to the several counties and Baltimore City shall only apply to abandoned vehicles which are removed from public or private property of this State on and after July 1, 1972.

(e) *Vehicles abandoned in garages, etc.*—Any motor vehicle left for more than ten days in a garage operated for commerical purposes after notice by registered mail, return receipt requested from the addressee, to the owner to pick up the vehicle, or for more than ten days after the period when, pursuant to contract, the vehicle was to remain on the premises, and any motor vehicle left for more than ten days in the garage by someone other than the registered owner or left by a person authorized to have possession of the motor vehicle under a contract of use, service, storage, or repair, shall be deemed an abandoned vehicle and reported by the garage keeper to the police department. Any garage keeper who fails to report the possession of the vehicle within ten days after it becomes abandoned within the meaning of this subsection, no longer has any claim for servicing, storage or repair of the vehicle. All abandoned vehicles left in garages may be taken into custody by the police department and sold in accordance with the procedures set forth in this section, unless

the motor vehicle is reclaimed and garage keeper is paid. The proceeds of the sale shall be applied first to the garage keeper's charges for servicing, storage, or repair, and any surplus proceeds shall be distributed in accordance with section (d) of this section. Nothing in this subsection shall be construed to impair any lien of a garage keeper under the laws of this State, or the right of a lienholder to foreclose. For the purposes of this subsection "garage keeper" means any operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of motor vehicles.

(f) *Disposition of vehicle to scrap processor or wrecker.*—(1) Any person, firm, corporation, or unit of government upon whose property or in whose possession is found any abandoned motor vehicle, or any person being the owner of a motor vehicle whose title certificate is faulty, lost or destroyed, may apply to the police department of the jurisdiction in which the vehicle is situated for authority to sell, give away or dispose of the vehicle to a scrap processor or wrecker.

(2) The application shall set out the name and address of the applicant, the year, make, model, and serial number of the motor vehicle, if ascertainable, together with any other identifying features, and shall contain a concise statement of the facts surrounding the abandonment, or that the title of the motor vehicle is lost or destroyed, or the reasons for the defect of title. The applicant shall execute an affidavit stating that the facts alleged therein are true and that no material fact has been withheld.

(3) If the police department finds that the application is executed in proper form and shows that the motor vehicle has been abandoned upon the property of the applicant, or if it shows that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the police department shall follow the notification procedures set forth in subsections (a) and (b) of this section.

(4) If an abandoned motor vehicle is not reclaimed in accordance with subsections (a) and (b), the police department shall give the applicant a certificate of authority to sell the motor vehicle to any wrecker or scrap processor for demolition, wrecking, or dismantling. The wrecker or scrap processor shall accept such certificate in lieu of the certificate of title to the motor vehicle.

(5) Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is otherwise totally inoperable. In those cases only, a scrap processor whose plant is physically located and operating in this state shall execute an indemnity agreement that shall be filed with the Motor Vehicle Administration. The indemnity agreement shall contain the name, address and signature of the person delivering the vehicle. The indemnity agreement, and the manufacturers serial or identification number shall be acceptable for payment of the full bounty authorized by section 5-205 if the vehicle identified in the indemnity agreement was titled in this state. Otherwise, for the purpose of administering the provisions of this section, the provisions of section 5-205 shall not apply.

(g) *Definitions.*—For the purposes of this section the following shall apply:

(1) "Police department" means the Department of Maryland State Police or any police department of a county, city or town and in Baltimore City the agency designated by the board of estimates.

(2) "Abandoned motor vehicle" means a motor vehicle, trailer or semi-trailer that is inoperable and is left unattended on public property for more than forty-eight hours, or a motor vehicle, trailer or semi-trailer that has remained illegally on public property for a period of more than forty-eight hours, or a motor vehicle, trailer or semi-trailer that has remained on private property without the consent of the owner or person in control of the property for more than forty-eight hours.

* * * * * *

APPENDIX II

STATE MOTOR VEHICLE ADMINISTRATION

11.02.05 REGULATIONS GOVERNING WRECKERS, SCRAP PROCESSORS AND ABANDONED VEHICLES.

.01 LICENSING OF WRECKERS. No person, firm or corporation shall be entitled to obtain a wrecker's license, under the applicable provisions of Article 66½, of the Annotated Code of Maryland, unless the applicant for such license meets the requirements set forth herein. (See Figure 1.)

.02 Each wrecker's location shall be subject to inspection by an authorized representative of the State Motor Vehicle Administration prior to approval of such application for a wrecker's license.

.03 Only one wrecker's license will be permitted for any one location.

.04 All additional locations shall also be subject to inspection by an authorized representative of the State Motor Vehicle Administration and shall meet all requirements of the primary location as set forth herein.

.05 The storage area of such wrecker shall be of a size and dimension as to be capable of storing at least twenty-five (25) vehicles standing as single units.

.06 Vehicles shall not be stored more than two (2) high and in a safe and secure manner, readily accessible to inspection.

.07 There shall be not more than two hundred and fifty (250) vehicles stored per acre of the wrecker's storage area.

.08 A current and valid Trader's License must be issued to the wrecker for the wrecker's location, indicated in the application by the political subdivision of that location. The location must also comply with all local ordinances and zoning regulations.

.09 The Trader's License must be displayed on the premises of the wrecker in a conspicuous place.

.10 The office must be housed at the wrecker's fixed location which is adequate and appropriate for the business so conducted.

.11 The office must be equipped with necessary facilities to conduct the wrecker's business.

.12 The premises and the books and records regarding purchases, sales, transfers of ownership, and other material of the wrecker shall be available for inspection during regular business hours by authorized representatives of the State Motor Vehicle Administration or any police departments.

.13 Every applicant for a wrecker's license shall submit to the State Motor Vehicle Administration an Initial Inventory Report and Subsequent Inventory Reports upon forms and in such a manner as may be prescribed by the agency. (See Figure 2.)

.14 Such Initial Inventory Report and Subsequent Inventory Reports shall include information

on every vehicle, body, or chassis stored by such applicant at the location for which the license was issued.

.15 Every vehicle, body, or chassis listed on the Initial Inventory Report or Subsequent Inventory Reports shall be tagged with an identification device which shall be furnished by the State Motor Vehicle Administration. The identification number listed for the vehicle described on either the Initial Inventory Report or the Subsequent Inventory Reports shall agree with the identification device which has been affixed to the vehicle.

.16 The identification device shall be fastened securely to the vehicle in such a position as prescribed by this agency.

.17 The State Motor Vehicle Administration shall issue a Certificate of Disposal to licensed wreckers for every vehicle, body, or chassis stored by such wrecker provided the following requirements are fully complied with. (See Figure 3.)

.18 The certificate of title or other ownership documents acceptable to the State Motor Vehicle Administration, including the Assumption of Ownership, Form VR-18, Form VR-20 and Form VR-95, properly executed, must accompany all Inventory Reports. (See Figures 4, 5 and 6.) The serial number and title number of each document shall compare exactly with each vehicle body or chassis shown on the inventory report.

.19 Every licensed wrecker shall submit to this agency an Inventory Report listing all vehicles subsequently acquired or disposed of after the submission of the initial inventory report or subsequent inventory reports. Such inventory report shall be on forms and be submitted in such a manner as prescribed by the State Motor Vehicle Administration. (See Figure 2.)

.20 For the purpose of administering the requirements of this chapter, the Inventory Report must be submitted to this agency on or before the 30th day of each month.

.21 If the wrecker does not acquire or dispose of any vehicles, bodies, or chassis during any report month, he shall note this fact on the Monthly Inventory Report and shall forward the report to the State Motor Vehicle Administration.

.22 The Certificate of Disposal shall consist of four (4) parts and each copy shall be distributed as follows: (See Figure 3.)

.23 Copy Number One — Upon conveyance of ownership of a vehicle to a scrap processor or to anyone other than a scrap processor after a proper assignment to such scrap processor or non-scrap processor, this copy shall be forwarded to the State Motor Vehicle Administration on the day such assignment was made by the wrecker.

.24 Copy Number Two — Shall be presented to a scrap processor immediately upon conveyance of ownership from the wrecker. If assigned to a non-scrap processor, this copy must be forwarded to the State Motor Vehicle Administration with Copy Number Three. If assigned to a scrap processor, this copy may be used by the processor to petition the State Motor Vehicle Administration for payment of the authorized bounty upon certification of destruction of the vehicle.

.25 Copy Number Three — If assigned to a scrap processor, this copy is to be retained as a part of the scrap processor's file. If assigned to a non-scrap processor, this copy must be forwarded to the State Motor Vehicle Administration with Copy Number Two.

.26 Copy Number Four — Shall be maintained by the wrecker as a part of his wrecker's file.

.27 The assignment of ownership on the Certificate of Disposal must be completed in detail and signed by the assigning wrecker upon transfer on interest to a licensed scrap processor or to anyone other than a licensed scrap processor.

.28 OMITTED.

.29 Whenever a licensed wrecker shall acquire a vehicle, body or chassis that does not have a manufacturer's identification or serial plate, such licensed wrecker shall:

.30 Make application to the State Motor Vehicle Administration for a Junked Vehicle Sticker upon forms and in such a manner as may be prescribed by the agency. (See Figure 7.)

.31 Have the vehicle available on the premises of the licensed wrecker in such a position so that it may be readily inspected by an authorized representative of the State Motor Vehicle Administration prior to the issuance of the Junked Vehicle Sticker by this agency.

.32 The State Motor Vehicle Administration may issue a Junked Vehicle Sticker to any motor vehicle stored by any licensed wrecker, when the wrecker can produce acceptable evidence of ownership.

.33 The license issued to any wrecker by the State Motor Vehicle Administration, under the applicable provisions of Article 66½, of the Annotated Code of Maryland, shall be displayed in a conspicuous place in the office of the wrecker where such business is conducted. (See Figure 8.)

.34 Every licensed wrecker shall use the license number from the license so issued upon all agency forms, in the area provided for such number, which relates to the licensing of wreckers.

.35 LICENSING OF SCRAP PROCESSORS. No person, firm or corporation, engaged in the business of the destruction of vehicles, bodies or chassis, shall be entitled to obtain a license as a scrap processor, under the applicable provisions of Article 66½, of the Annotated Code of Maryland, unless the applicant for such license meets the requirements set forth hereinafter. (See Figure 1.)

.36 Each scrap processor's location shall be subject to inspection by an authorized representative of the State Motor Vehicle Administration prior to the issuance of such license.

.37 Only one scrap processor's license will be permitted for any one location.

.38 All additional locations shall be subject to all of the licensing requirements of the primary location.

.39 A current and valid Trader's License must be issued for the scrap processor's location, indicated in the Application for a Scrap Processor's License, by the political subdivision of that location.

.40 The Trader's License must be displayed on the premises of the scrap processor in a conspicuous place.

.41 The office must be housed at the scrap processor's fixed location in a substantial building which is appropriate for the business so conducted, not withstanding the provisions outlined in paragraph .45 of this chapter.

.42 The office must be equipped with office furniture and filing cabinets to reasonably conduct the scrap processor's business.

.43 The premises and books and records regarding purchases, sales, transfers of ownership and other related material shall be available for inspection by an authorized representative of the State Motor Vehicle Administration or law enforcement agencies.

.44 The scrap processor must be equipped with a hydraulic bailer, and shears or a shredder or any other such equipment that may be approved by the State Motor Vehicle Administration. Any other equipment, so approved, shall have the capability of rendering the scrap acceptable to any smelting operation without any further processing by the scrap processor.

.45 The State Motor Vehicle Administration in the exercise of its administrative discretion, may license scrap processors not geographically located within the boundaries of the State of Maryland, provided that such scrap processor maintains an office in the State of Maryland, that shall be approved by this agency.

.46 The license issued to any scrap processor by the State Motor Vehicle Administration, under the applicable provisions of Article 66½, of the Annotated Code of Maryland, shall be displayed in a conspicuous place in the office of such scrap processor where such business is conducted. (See Figure 9.)

.47 Every licensed scrap processor shall use the assigned license number on all agency forms, in the area provided for such number, which relates to scrap processors.

.48 Upon receiving a vehicle, body or chassis from any licensed wrecker, the scrap processor shall obtain from such wrecker an assignment of ownership on copies number 2 and 3, of the Certificate of Disposal, (See Figure 3.), which has been properly executed by such assigning wrecker. Copy number 3 shall be retained by the scrap processor as a part of his files.

.49 When such vehicle has been completely destroyed by the licensed scrap processor, he shall certify on the reverse side of Copy Number Two of the Certificate of Disposal that such destruction has been accomplished and the

execution of such certification and submission to this Administration shall be the request for payment of the authorized bounty.

.50 The manufacturer's identification or serial number plate or the assigned Junked Vehicle Sticker and the properly executed Request for Payment shall be forwarded to the State Motor Vehicle Administration on the day such vehicle was so destroyed and such serial plate and executed Request for Payment shall serve as evidence of destruction and shall authorize the State Motor Vehicle Administration to effect payment of said bounty.

*.51 The authorized bounty shall be disbursed as follows:

A. Eight dollars ($8.00) to the assigning wrecker,

B. Eight dollars ($8.00) to the scrap processor destroying the vehicle, and

C. In the event that a scrap processor has acquired any vehicle, body or chassis from any person other than a licensed wrecker, the entire 16 dollars ($16.00) bounty shall be disbursed to the scrap processor. In this case the submission of a properly executed Certificate of Destruction of a Motor Vehicle, Form VR-124, and evidence of ownership shall serve as the request for payment of the authorized bounty. (See Figure 10.)

.52 No payment shall be made to any wrecker or scrap processor by the State Motor Vehicle Administration unless and until such Request for Payment which has been properly executed and the said serial plate has been forwarded to the State Motor Vehicle Administration.

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* This change due to amendment of the law dated April 26, 1973.

.53 The State Motor Vehicle Administration may establish procedures for the periodic payment of the bounty consistent with accepted procedures.

.54 Upon receiving a vehicle, body or chassis from any person, firm, corporation, or unit of government other than a wrecker, the scrap processor shall obtain from the seller or transferor, the Maryland Certificate of Title.

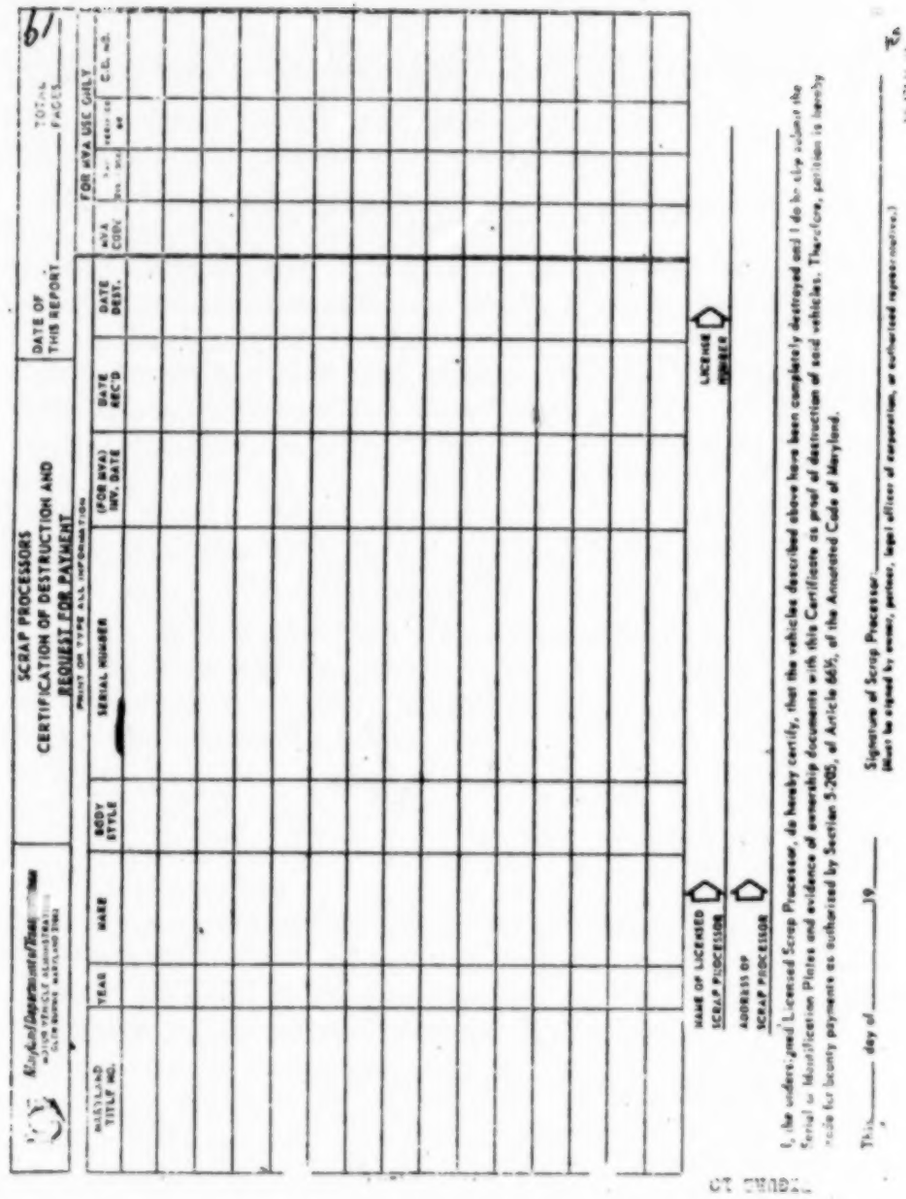
.55 For the purpose of administering the provisions of this regulation the term "Historic Motor Vehicle" shall have the same definition as set forth in Section 3-825 (1) of Article 66½ of the Annotated Code of Maryland and shall include but not be limited to vehicles enumerated in Section 11.02.02 paragraph .38 of Title II Department of Transportation, Maryland Agency Rules and Regulations.

.56 Whenever a licensed wrecker shall acquire possession of an "Historic Motor Vehicle", the assessment required under the provisions of Section 5-203 (d) of Article 66½ of the Annotated Code of Maryland may be waived at the discretion of the Motor Vehicle Administration in order to aid in the historical preservation of such vehicles and for use of the body, chassis, and parts thereof for restoration purposes.

.57 Classic Motor Vehicles — Every make of motor vehicle for which production has been discontinued and not resumed by the manufacturer.

.58 Whenever a licensed wrecker shall acquire possession of an antique or classic motor vehicle, as defined in paragraphs .56 and .57 of this chapter, the assessment required under the provisions of Section 5-203 (d), of Article 66½, of the Annotated Code of Maryland may be waived at the discretion of the Administrator of Motor Vehicles in order to aid in the historical preservation of such vehicles and for use of the body, chassis and parts thereof for restoration purposes.

FORM VR-124



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APPENDIX III

Md. Legislative Council Committee on Taxation and Fiscal Matters, 1967 Report.

DISPOSAL OF SOLID WASTES

These two items, Nos. 58 and 176, are concerned with the problems of solid wastes in Maryland. Senate Bill No. 434 (Item 58, introduced at the 1967 regular session, would require that the planning for water and sewerage facilities by local governments include facilities for the disposal of solid wastes. Senate Joint Resolution No. 57 (Item 176) requested the Committee on Taxation and Fiscal Matters to review the problems of abandoned and discarded motor vehicles and proposed legislation to effect a solution to these problems.

At its first hearing on the subject, the Committee heard testimony from steel scrap processors, auto and truck wreckers, and representatives of automobile dealers and manufacturers, of the Federal Bureau of Public Roads and of the State departments of Health, Motor Vehicles, and the Maryland State Police. Subsequently, the Committee also had a communication from a steel manufacturer.

From this testimony, and from the examination of certain written materials, including studies by Federal and State agencies, it became apparent that the core of the problem was to find ways to speed up the so-called "scrap cycle." In a report made to the General Assembly late in 1966, the State Department of Health said: "Restoring the scrap cycle seems to be the only logical means to rid the countryside of worn-out, rusting automobile hulks."

Although other disposal methods have been discussed from time to time, the most effective and most practicable means would seem to be to use the scrapping process, which combines profit for industry with conservation of natural resources. From the

evidence presented to the Committee, the objective would seem to be to accelerate the movement of the vehicle from the owner who has decided to discard it, to the auto wrecker who salvages parts and markets the hulk, to the scrap processor who reduces it to scrap marketable at the mills, and finally to the steel mills which convert it into new usable steel.

From the scrap processors, manufacturers and others, the Committee learned that the price of the hulks is affected adversely by the cost of the removal of contaminants, including non-ferrous metals, dirt, rust and other materials. This condition, it was disclosed, will be aggravated by the proposed ban on open burning of hulks at wreckers' yards.

It is indicated that the point at which the movement bogs down most frequently is at the automobile junkyard. The most profitable — and sometimes the only profitable — part of his operation is the sale of usable parts. The margin of his profit in the sale of the hulk to the scrap processor is so small that any obstruction tends to retard the movement. This difficulty is expressed in a communication from a wrecker, attached here as Exhibit A.

Technological advances in the manufacture of steel has reduced the market for the kind of scrap that comes from abandoned and discarded motor vehicles. This new steel-making process was described by several persons who testified before the Committee, and its effects upon the scrap market is discussed in a communication from an official of Bethlehem Steel Corporation, presented here as Exhibit B.

Technological improvements in the processing of scrap offer some prospect of a better quality of scrap and hence a better price for the product. The shredding process was described to the Committee. A report by the U.S. Department of Commerce (*Iron and Steel Scrap Consumption Problems,* Page 26) says this process, which removes contaminants without burning, "apparently will be the method used to process the bulk of these materials in the near future."

Titling of motor vehicles and other legal technicalities, the Committee learned, frequently tend to make a wrecker hesitate to handle the abandoned or discarded automobile. This problem is discussed in Exhibit A, and also in a communication from a representative of the Department of Motor Vehicles, attached as Exhibit C.

Early in the discussion of the subject matter, the Committee recognized it was dealing, in reality, with two problems: (1) the abandoned motor vehicle and (2) the motor vehicle junkyard. Abandonment is just one aspect of the overall problem of disposal. The accumulation of junk vehicles in unsightly salvage yards, in "automobile graveyards" and in other places is another aspect.

Owners often abandon their worn-out cars because it is less expensive and less time-consuming than driving them or towing them to a wrecker. The auto wreckers accumulate them in large quantities because: (1) it is an easy way to store inventories of profitable parts, and (2) there is little or no financial inducement to remove them to the scrap processor. Junk automobiles also tend to accumulate around garages and service stations, and in some cases around private homes, as a source of parts and for other reasons.

At the suggestion of the Chairman of the Committee, a member of the staff of the Fiscal Research Bureau met with officials of the Department of Motor Vehicles to consider legislation to deal effectively with the twin problems of motor vehicle abandonment and motor vehicle junkyards. At a subsequent Committee meeting, Mr. Ejner Johnson and Mr. Charles Pfaff, Department of Motor Vehicles officials, submitted a draft proposal, attached hereto as Exhibit D.

After considering this proposed legislation, along with House Bill 626, which was introduced at the last session and which is the Uniform Act on abandoned vehicles recommended by the Council of State Governments, the Committee was unable to reach a decision and the Chairman appointed a subcommittee to study the matter further and recommend a course of action.

BEST COPY AVAILABLE

The Subcommittee on Abandoned and Discarded Motor Vehicles met and heard further testimony from representatives of the Maryland Auto Wreckers Association, who stated that to place a heavy tax or assessment on their inventory of junk cars would tend to drive them out of business. They acknowledged, however, that cars should not be kept in yards for more than two years and indicated they could sustain a tax or assessment after the expiration of a two-year period.

Members of the Subcommittee assured the automobile wreckers that they acknowledged the importance of the business they were engaged in, not only as legitimate profit-making enterprises but also as a vital link in the disposal process.

After this hearing and a lengthy discussion, the Subcommittee recommended that the Committee approve that part of the Johnson-Pfaff draft having to do with junkyards, but that it reject the portion dealing with abandoned motor vehicles, substituting therefor the Uniform Act, attached to this report as Exhibit E.

CONCLUSIONS

The Committee on Taxation and Fiscal Matters feels that legislation is needed to cope with the problem of abandoned motor vehicles and also with automobile junkyards. It considers the uniform law proposed by the Council of State Governments to be the best legislation suggested to deal with this problem, but believes this act should be strengthened by placing a penalty on persons who unlawfully abandon vehicles on public or private property.

The Committee feels that the auto wrecker plays an important role in the disposal of abandoned and discarded motor vehicles and should be encouraged to handle as many of these vehicles as possible. But it feels also that he should be persuaded to move vehicles into the scrap cycle as soon as practicable after the salvaging of usable parts, and believes that some penalty should be imposed upon persons in the industry who through neglect or inertia fail to move vehicles to scrap processors within a reasonable length of time.

RECOMMENDATIONS

The Committee recommends therefore:

1. *That the Uniform Law on Abandoned Motor Vehicles (H.B. 626, 1967 session) be enacted, and that a section be added thereto providing a fine of $25 to $200 for anyone who abandons a motor vehicle on any public property or on any property other than his own without the permission of the owner or lessee of such property.**

2. *That Sections 71B, 71C, 71D, 71F, 71G and 71H of the Johnson-Pfaff draft be enacted, with the provision for a $5 assessment for each vehicle kept for more than one year and $5 for each six months thereafter, and that a new section be added to provide that: "It shall be unlawful for a scrap processor or wrecker to store vehicles for salvage or demolition at a density of more than 100 vehicles per acre." The Act would take effect January 1, 1969.***

EXHIBIT A

VARSITY AUTO REPAIR, INC.

July 11, 1967

George E. Snyder, Chairman
Committee on Taxation and
Fiscal Matters

Dear Senator Snyder:

The fundamental problem of junked cars bottlenecks right at the point of final disposition for demolition, and until that problem is solved, none of the other proposed measures is worth a dime. Right now the junk yards and towing companies are performing what constitutes a public service in handling these abandoned auto at great expense and little or no compensa-

* A bill has been prepared and will be included in the report of the Legislative Council to the 1968 General Assembly, if adopted.

** A bill has been prepared and will be included in the report of the Legislative Council to the 1968 General Assembly, if adopted.

tion, and the only practical legislation possible is to make this operation worthwhile economically which can be done. Any restrictive legislation aimed at the junk yards or towers will in all likelihood result in a suspension of the only disposition channels currently in operation for junk cars. The situation needs to be approached in the following order.

1. Create a plant for the ultimate demolition of the car bodies. This is a must, whether it be state operated or privately financed. Local laws against burning have eliminated the only previous economically workable arrangement for ordinary operators.

2. Create an artificial value for junk cars, whereby their owners, or the junk yard or towers, will find it profitable to get the car to the demolition plant. The idea of a fixed fee, applied annually to the license tags, is one method of fairly distributing the responsibility of final disposition amongst the various owners of the vehicle. This added fee would serve to pay the tower and the operator of the disposal plant, if privately operated.

3. Ease the difficulty of the towing company or other storer in getting the right to take the car to the disposal plant. The new Certification of Sale plan appears to be a great step forward, but to date none of the police departments have set up the machinery to grant the Certification of Salvage Value which is an integral part of the plan.

Ease the methods of obtaining the name of the owner of the vehicle to whom the registered letter must be sent. Currently this must be obtained by taking the serial number to DMV, but they will only give out three names per day. This is time consuming and costly. Why couldn't this be done by the telephone to storers with special permits?

Ease the problem of getting rid of wrecked cars, or even junk cars, which have outstanding liens. The above rules at DMV also apply to getting lien information, and that could be similarly done by telephone, but the big bottleneck here is to get action out of the lienholder. The right to notify the lienholder

with a ten day waiting period, should be sufficient to grant the storer a Certification of Sale and authority to dispose of the car.

Once these direct problems are solved, we can get on with legislation to regulate junk yards and other storers in the direction of faster turnover and beautification, but until the economic means and facilities for disposal of junk cars are established, it is hardly expedient to propose legislation which would encumber the present set up, even as poor as it is for all concerned. Either state operated machinery, or a profitable system for private industry must be effected, or else all other legislation will be only window dressing.

Very truly yours,

JOHN M. SASSER,
President.

EXHIBIT B

BETHLEHEM STEEL CORPORATION

October 2, 1967

The Honorable George E. Snyder, Chairman
Committee on Taxation and Fiscal Matters
State Office Building
301 West Preston Street
Baltimore, Maryland 21201

Dear Senator Snyder:

Referring to your letter of September 25th to W. F. Holin of this office, we discussed the matter of the appearance of a Bethlehem representative at your Committee meeting on Monday evening with Mr. Odell Smith of your staff.

As we explained to Mr. Smith, the basic problem you have under study is one that required the technical assistance of the scrap industry and is, in reality, a step removed from our operations. For this reason, we feel it would be inappropriate for us to appear before your Committee to provide expert testimony.

Mr. Smith then indicated to us there was only one question the Committee wanted answered by a steel representative, i.e.; Do the technological changes currently being made in the steel industry (that is, the shift from open hearth to basic oxygen furnace production) mean that less scrap is required in the future?

The answer to this question is "yes." The basic oxygen furnaces consume a higher proportion of molten pig iron (reduced from ore) and lesser of scrap than do the conventional open hearth furnaces. This trend will undoubtedly increase in future years as the older open hearths are phased out and are replaced by the more economical and more productive basic oxygen furnaces.

We sincerely regret we are unable to have a representative appear at your meeting on Monday night, but this letter should serve as the official Bethlehem Steel Corporation answer to the one question Mr. Smith says the Committee wants answered.

Very truly yours,

T. T. LANKFORD, Jr.,
Assistant to General Manager.

EXHIBIT C

DEPARTMENT OF MOTOR VEHICLES

July 13, 1967

Mr. Odell M. Smith
Fiscal Research Bureau
301 West Preston Street
Baltimore, Maryland 21201

Dear Odell:

The following is a summation of testimony that was offered by me and Mr. Charles Pfaff, Assistant Director, Vehicle Registration Division, Tuesday evening, July 11, 1967, before the Committee on Taxation and Fiscal Matters:

During the 1967 session of the Maryland General Assembly legislation was introduced by Senator George Snyder of Washington County, designed to rid the

countryside of unsightly automobile junk yards. Known as Senate Bill 257, the legislation would have required that junk dealers, six months from the date of delivering the titles for vehicles to be scrapped to the Department of Motor Vehicles, would notify the Department that the vehicles had in fact been scrapped, dismantled or destroyed. In the event that the vehicles were not disposed of within the time required, the junk yard owner would be required to pay an excise tax of $20.00. Because of various administrative problems, particularly the costs involved, that arose regarding this legislation the Bill was not reported out of the Senate Finance Committee. Instead, a resolution introduced by Senators Clark and Snyder was adopted directing the Committee on Taxation and Fiscal Matters to study the overall problem of disposition of junked automobiles.

The existing law that governs the disposition of junked automobiles can be found in sections 56 and 67 of Article 66½. Essentially, these provisions provide for wreckers or dismantlers (junk yard) to immediately deliver to the Department of Motor Vehicles the titles for vehicles to be purchased for scrap or to be dismantled. The law also requires that such wreckers maintain records open for inspection to Peace Officers. As you can see, existing law in no way provides for the effective removal of the vehicles even after all usable parts have been scavenged.

It should be noted also that at the 1967 session of the Maryland General Assembly, Senate Bill 22 prepared by the Legislative Council with this Department's assistance, did set up a relatively easy method for the disposition of abandoned motor vehicles on private or public property. Essentially, this new law permits the owners of property upon which such vehicles have been abandoned to notify the owners of such vehicles and also any lienholders as shown by records of the Department of Motor Vehicles that the vehicles have been abandoned on the property and that the owners of property intend to sell the vehicles if such vehicles are not claimed. This notice to registered owners and lienholders is sent after a 30-day waiting period and if

no reply is received within 10 days the property owners may proceed with disposition on forms printed by this Department of Motor Vehicles and available from the State Police. Thus, some positive steps have been taken to remove some of the difficulties that have arisen in this disposition of abandoned automobiles as a result of this State's titling laws. It seems that the problem to which the committee was addressing itself essentially involves the proliferation of automobile junk yards throughout the State and not essentially the disposition of abandoned automobiles, a problem which, as I have already indicated, has been to a large degree resolved by Senate Bill 22.

There are a number of approaches to this problem but unfortunately none of them that I have come across preclude the open burning necessary so that the hulk of the automobile can be properly prepared for the scrap processing.

In my conversation with representatives of the scrap metal institute I was advised that several states, including New York, Connecticut and Tennessee, have studied the problem of unsightly automobile junk yards. It is also my understanding that the State of Wisconsin has under active consideration at this time a law that is aimed at resolving the automobile junk yard problem. One method proposed, which is similar to the plan under consideration in Wisconsin and was suggested also to the committee by Mr. Sasser of Varsity Towing, calls for the imposition of a surtax on the titling fee charged by this Department. In other words, for every original and subsequent title issued for a motor vehicle by this Department the revenue received by this Department would be funneled into an escrow fund. Then, when the vehicle was eventually turned over to a junk yard operator, the operator would be encouraged to remove all parts that possibly could be sold immediately and haul the remaining carcass to a scrap processor. The scrap processor in turn would certify on forms prepared by this Department that the vehicle in question was in fact processed. This certificate would then be presented by the junk yard operator to the Department and a specified fee would be paid to the

junk yard operator for disposing of the junked automobile. This proposal in a sense creates an artificial value for the carcass of the junked automobile and would serve to encourage rapid disposition of the vehicle and preclude its laying around for 2 or 3 years in an automobile junk yard. Unfortunately, this proposed solution does not address itself to the problem of open burning and the attendant problem of air pollution.

In addition, some consideration should also be given to the fact that many of the cars that are titled and registered in Maryland and for which a fee would be paid, are junked in other states and therefore the imposition of the surtax may not necessarily be equitable in such instances.

A second proposal simply requires the fencing from public view of automobile junk yards. This solution does not address itself to the problem of open burning nor does it strike at the heart of the problem which is really the elimination of the carcass of junked automobiles from the countryside and the proliferation of junk yards.

A third proposal would require that automobile junk yards be licensed perhaps by the Department of Motor Vehicles in much the same fashion as the Department currently licenses automobile dealers. Under this proposal, junk yard operators would be required to maintain accurate books and records subject to inspection during normal business hours by auditors and investigators of this Department. Wreckers and dismantlers would be required to immediately submit to the Department the titles of vehicles that come into their possession. Accompanying each title would be one part of a 3-part form prepared by this Department. The title would be cancelled by this Department and the form would be placed in a suspense file. The proposal would require that junk yard operators, within a specified period of time, perhaps 90, perhaps 120 or perhaps 180 days, dispose of the vehicle in question through a scrap processor. At the time that the vehicle is actually processed by the scrap processor, the second part of the 3-part form previously mentioned would be

certified by the scrap processor that the vehicle has in fact been scrapped. This form would then be submitted to the Department by the junk yard operator to close out the suspense file on the vehicle in question. The third part of the form would be maintained by the owner of the junk yard. This plan has some obvious disadvantages, however.

(1) It would be costly in that it would require the hiring by this Department of a number of additional auditors and investigators for the purpose of licensing and regulating automobile junk yard operators.

(2) Since, at the present time, there appears to be little market for scrap metal, it could result in the refusal by many junk yard operators to accept automobile wrecks and abandoned cars, particularly those more than 7 years old. The net result could be perhaps an increase rather than a decrease in the problem so long as the carcass of the junked vehicle has little value as scrap.

(3) It would also impose additional costs on dealers since it would require them to dismantle vehicle parts and to establish some sort of inventory control. This, too, would raise the cost of doing business with the junk yard operator. It may encourage him to either leave the business or refuse to accept vehicles of a vintage that makes the parts relatively valueless.

(4) It does not resolve the problem of open burning.

Finally, let me say that in reviewing our studies of automobile junk yard control, the problems to be solved revolve to a large degree around the following:

(1) Open burning.

(2) The creation of an artificial value for the automobile carcass to encourage its rapid delivery to a scrap processor.

(3) The establishment of a time period during which the vehicle in question may be permitted to remain on the automobile junk yard property.

(4) Technological advances in the scrap metal industry that would eliminate the need for open burning through the development of furnaces that would destroy the contaminants in automobile carcasses without polluting the air.

Please be assured that Commissioner Jewell and the Staff of this Department stand ready to assist the committee in every way possible in resolving this problem.

With kindest personal regards, I am

Sincerely yours,

EJNER J. JOHNSON, *Exec. Asst.*

* * * * * *

APPENDIX IV

Md. Legislative Council Committee on Taxation and Fiscal Matters, 1968 Report.

DISPOSAL OF ABANDONED AND JUNKED MOTOR VEHICLES

This item, No. 1(b), is on the Committee's agenda again this year as a result of a veto by the Chief Executive of a bill which the Committee sponsored in the 1968 session to regulate the disposal of abandoned and discarded motor vehicles.

The Governor based his rejection of the bill primarily on the questionable constitutionality of Subsection (k)(5) of the bill (Senate Bill No. 16). The veto message accompanies this report as Exhibit A. The Governor also mentioned the hardship upon wreckers of the taxing provisions of the bill and asked the General

Assembly to re-examine the desirability of a "burial tax" — a tax upon vehicles to subsidize scrappers. The Committee, in its original study of the problem, examined the "burial tax" proposal thoroughly and rejected it.

The Attorney General questioned the constitutionality of Subsection (k)(5), stating that it "might be held to unduly restrict the lawful operation of a private business in violation of Article 23 of the Maryland Declaration of Rights." His opinion is attached hereto as Exhibit B. He also noted a defect in the title of the bill.

The Attorney General said however, that Subsection (k)(5) if unconstitutional would not invalidate the remainder of the bill, despite the fact that it contained no severability clause.

CONCLUSIONS

In its reconsideration of this matter, the Committee reaffirmed its position of last year, noting the urgent need of legislation to cope with the problem of abandoned motor vehicles and automobile junkyards. It believes that the legislation adopted by the General Assembly to a great extent would relieve this problem. It acknowledges, of course, that the bill should be revised to correct the deficiencies noted by the Attorney General. A suggested form for the revised legislation is attached, Exhibit C.

As it stated in its report of last year, the Committee is aware of the important role the auto wrecker plays in the disposal of abandoned and discarded vehicles and believes that his business activity should be encouraged. It believes that the wrecker should be persuaded to move vehicles into the scrap cycle as rapidly as possible, and thinks that to accelerate this cycle some penalty should be imposed upon those persons in the industry who through neglect or inertia fail to move vehicles to scrap processors within a reasonable length of time.

RECOMMENDATIONS

Therefore, the Committee recommends *that the General Assembly override the Governor's veto of Senate Bill No. 16, and that amendatory legislation* be enacted to correct the defects noted by the Attorney General.*

EXHIBIT A

Honorable William S. James
President of the Senate
State House
Annapolis, Maryland

Dear Mr. President:

In accordance with Section 17 of Article II of the Maryland Constitution, I have vetoed today Senate Bill 16 and am returning it to you.

This bill would provide for the regulation of wreckers and scrap processors and the licensing of wreckers among other provisions. I am well aware of the problem of solid waste disposal and certainly commend the Legislative Council's committee on taxation and fiscal matters for their interest and work toward a novel solution. However, the difficulties with certain provisions of this bill are of such magnitude that I must register my disapproval.

The Attorney General whose opinion is attached and is to be considered part of this veto message, has advised me that subsection (K) (5) may well be invalid. This provision, which would make it unlawful for a licensed wrecker to refuse to accept a junked auto, is the heart of the bill according to its proponents. Without it the bill loses much of its force in dealing with this problem.

I am sure also, that the legislature, had it known of the probable unconstitutionality of subsection (K) (5),

* A bill will be prepared in accordance with this recommendation and included in the report of the Legislative Council to the 1969 Session of the General Assembly.

would not have approved the bill which included it. Now that I have been made aware of the constitutional difficulty, I cannot overlook it and approve the bill on the basis that the other provisions could probably stand without the invalid provision.

I was also impressed by the testimony of the wreckers who appeared before me at a hearing on the bill. It seems clear that the taxing provisions of the measure could and would mean a serious economic hardship on those involved. I urge the legislature to consider this provision carefully and in so doing, examine again the desirability of a "Burial Tax" imposed at the time of sale and held in escrow for the point in time when an auto is ready to be scrapped. Such a fund would provide a means by which the State could furnish an incentive to those in the business to take scrapped vehicles at the end of their useful life. I am aware that this approach runs into some difficulty due to the mobility of our society, especially here in Maryland. It may be that the Federal Government should establish such a procedure thereby insuring the participation of all States.

For the above reasons I am compelled to veto this measure.

Sincerely,

(s) SPIRO T. AGNEW, Governor

EXHIBIT B

THE ATTORNEY GENERAL

1200 One Charles Center
Baltimore, Maryland 21201

April 19, 1968

Honorable Spiro T. Agnew
Governor of the State of Maryland
State House
Annapolis, Maryland 21404

Re: Senate Bill 16

Dear Governor Agnew:

You have requested us to review Senate Bill 16 and to advise you whether it is constitutional. Senate Bill 16, which repeals various sections of the Motor Vehicle Code and enacts a new Sec. 71 to that Code, would, among other things, define wreckers and scrap processors, provide for the disposal of abandoned motor vehicles and for the licensing of wreckers, and cover other related matters.

While the matter is not entirely free from doubt, we believe that, with the exception of subsection (k)(5), the Bill is constitutional. It is true that the Bill does make distinctions in the obligations imposed as between wreckers and scrap processors as defined therein. However, in light of the strong presumption of constitutionality which attends the passage of a bill, we are unable to say that these distinctions on their face constitute a denial of equal protection of the laws.

Subsection (k)(5) presents an additional problem. This subjection makes it unlawful for a wrecker to refuse to accept any vehicle or part thereof unless the wrecker has reason to believe the vehicle has been stolen. We believe that subsection (k)(5) might be held to unduly restrict the lawful operation of a private business in violation of Article 23 of the Maryland Declaration of Rights. This is especially true in light of the requirement in subsection (n) of the Bill that a wrecker store no more that 250 vehicles on any one acre of property.

While the Bill itself does bear a substantial relation to the public health, the provisions of subsection (k)(5) might well constitute an unreasonable exercise of the police powers. See *Dasch v. Jackson,* 170 Md. 251, 263-264 (1936).

If subsection (k)(5) is invalid, it would not, in our opinion, invalidate the remaining provisions of the Bill. Even though the Bill does not contain a severability clause, it seems clear that without subsection (k)(5), the original legislative intent in enacting the Bill would be preserved and we therefore, are of the opinion that the remainder of the Bill would not be effected in any event. *Baltimore v. A. S. Abell Co.,* 218 Md. 273 (1958).

It is also true that the title of the Bill refers to the licensing of scrap processors along with wreckers whereas the Bill actually does not provide for the licensing of scrap processors. However, we do not view this inaccurate limitation in the title as being misleading in the constitutional sense, but rather more surplusage. *Pressman v. State Tax Comm.,* 204 Md. 78 (1954).

We trust this information will be helpful to you.

Sincerely,

FRANCIS B. BURCH, *Attorney General.*

* * * * * *

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between Alexandria Scrap Corporation, Plaintiff, by Norman P. Ramsey, H. Thomas Howell, Carl E. Eastwick, and Semmes, Bowen & Semmes, its attorneys, and Harry R. Hughes, Ejner J. Johnson, Charles F. Pfaff, and Nance J. Stanboni, Defendants, by Francis B. Burch, J. Michael McWilliams, Judson P. Garrett, Jr., and N. Barton Benson, their attorneys, for the purpose of the trial of the above-entitled and numbered cause, that upon the trial of said action the following facts are admitted and agreed upon by the parties and shall be taken as true without any evidence being produced

thereon. However, other and additional proof as to any fact or matter not inconsistent with the statements contained in this stipulation may be introduced by either of the parties.

1. The Plaintiff is a corporation organized under the laws of Virginia.

2. The Defendants are various state officials charged with the administration of Section 11-1002.2(f)(5) of Article 66½ of the Maryland Annotated Code (1974 Supp.).

3. The Plaintiff has been a licensed scrap processor since the inception of the statute.

4. The Plaintiff's processing facilities are located in Alexandria, Virginia.

5. The Plaintiff has been engaged in interstate commerce in the business of processing iron, steel, and nonferrous scrap for sale for resmelting by steel mills throughout the United States.

6. Plaintiff's methods of operation have not been altered by the statutory license requirements, except to subject it to regulatory burdens and requirements which did not exist until Maryland adopted comprehensive legislation.

7. In 1970, when scrap processors came under the statute, Plaintiff applied for and was granted a scrap processor's license and has maintained it continuously, with periodic renewals until the present time. A copy of Plaintiff's current scrap processor's license, Form VR-89 is appended hereto as Exhibit A and incorporated by reference herein.

8. Plaintiff maintains an office in Maryland at 302 Ellsworth Drive in Silver Spring in compliance with administrative regulations contained in M.A.R.R. 11.02.05.45.

9. Of the 16 scrap processors which have been licensed by the Administration, seven of them, including the Plaintiff, are non-Maryland processors with no processing facilities physically located within Maryland; apart from Plaintiff, these are all located in

Pennsylvania; Pollock-Abrams, Inc.; Coatesville Scrap Iron & Metal Co., Inc.; Tube City Iron & Metal Co., Inc.; M. Glossor & Sons, Inc.; Goldstan Processing Corp.; and Raimco Recycling Metal Co. (corporate successor to Goldstan).

10. In order to participate in the scrap metal industry, a scrap metal processor must invest substantial sums in equipment. Maryland licensed scrap processors are required, as a matter of industrial necessity and now statutory command, to maintain a hydraulic baler and shears or a shredder, or other equipment capable of rendering the scrap acceptable to any smelting operation by the steel mills. This equipment often costs in excess of a million dollars and has to be installed permanently at great expense.

11. Scrap processors are also subject to even more violent ups and downs than the cyclical industries which buy the processed scrap. The market value of automobile hulks is heavily dependent upon the prices steel mills are willing to pay for the scrap, which in turn is influenced by national and international economic conditions over which Maryland has no control. The result is relatively fierce competition by scrap processors for the acquisition of the available automobile hulks.

12. The destruction of Maryland titled automobiles bestows economic advantages upon scrap processors, licensed wreckers, unlicensed wreckers, scrap yard operators, vehicle towers, and other members of the general public who elect to take part in the bounty program. Some of these individuals, although not eligible to claim the statutory wrecker's bounty by regulation (M.A.R.R. 11.02.05.51), customarily shared a portion of the scrap processor's bounty which the processor voluntarily remitted or credited at the time the vehicle hulk was delivered as incentive for future deliveries. Because of this division of the bounty, as a practical matter, scrap processors like Plaintiff have promoted the legislative purpose by further inducing unlicensed wreckers and towers, who were not regulated and not subject to assessment on the vehicles in their

possession to place those vehicles into the "scrap cycle."

13. As an original participant in the bounty program, Plaintiff ranks third among all 16 licensed scrap processors in terms of bounty payments received with approximately 13.7% share of the payments, having received $219,084.00 in bounty payments since the program's inception until September 30, 1974. *See* Tables I and VI, which are appended hereto and are incorporated by reference herein. Plaintiff and the other nine top processors have shared in 99.1% of all bounty payments to scrap processors through September 30, 1974. *See* Table VI.

14. As a matter of practice, scrap processors have required persons delivering vehicles, unaccompanied by title certificates, or other documentation to execute a form of indemnity agreement by which the transferror (1) certified that he had legal ownership of and authority to deliver the vehicle, (2) agreed to indemnify the scrap processor from all liability for claims arising from destruction of the vehicle, and (3) warranted compliance with all Maryland laws and regulations.

15. As of July 1, 1974, Plaintiff and all other licensed scrap processors whose plants are not physically located and operating in Maryland can secure payment of the Section 5-205 bounty for the destruction of eight year old or older inoperable vehicles only by producing a Certificate of Title, a Certificate of Disposal (Form VR-28), a police Certificate of Authority (Form VR-20), or an Auctioneer's Bill of Sale (Form VR-46).

16. The police Certificate of Authority (VR-20) method of transferring title of an eight year old or older, totally inoperable vehicle to a scrap processor was seldom used and never really considered as an alternative to the indemnity agreement prior to July 1, 1974, when the provisions of Section 11-1002.2 (f)(5) were uniformly available to customers of *all* scrap processors, irrespective of location.

17. Tables I through VI attached hereto and made a part hereof are an accurate summary of the Motor

Vehicle Administration's records of bounty amounts authorized to be paid by the Maryland Comptroller's Office to scrap processors licensed by the State of Maryland for the period from July 1, 1970 to September 30, 1974.

18. The attached copy of the current scrap processing license certificate issued to Alexandria Scrap Corporation by Maryland is true and correct.

19. The attached copies of indemnity agreements submitted to various Maryland-Licensed scrap processors are true and correct.

Dated this 16th day of January, 1975.

FRANCIS B. BURCH,
J. MICHAEL MCWILLIAMS,
JUDSON P. GARRETT, JR.,
N. BARTON BENSON,

Attorneys for the Defendants

NORMAN P. RAMSEY,
H. THOMAS HOWELL,
CARL E. EASTWICK,
SEMMES, BOWEN & SEMMES,

Attorneys for the Plaintiff.

TABLE I:

Percentage of Monthly Bounty Payments Paid to Alexandria Scrap Corporation July 1, 1970 — Sept. 30, 1974

Month	Paid to Alexander Scrap Corp.	Total Monthly Payment Approved	% Paid to Alexandria Scrap
1970			
July	$ 1,040.00	$ 10,840.00	9.59
August	3,210.00	20,960.00	15.31
September	1,250.00	13,780.00	9.07
October	2,470.00	25,660.00	9.62
November	1,330.00	12,960.00	10.26
December	1,870.00	23,510.00	7.95
1971			
January	1,650.00	14,040.00	11.75
February	605.00	6,465.00	9.35
March	1,495.00	13,145.00	11.37
April	2,105.00	15,735.00	13.37
May	1,430.00	16,615.00	8.60
June	1,350.00	31,060.00	4.34
July	1,335.00	13,640.00	9.78
August	1,345.00	15,355.00	8.75
September	540.00	16,875.00	3.20
October	1,565.00	11,695.00	13.38
November	2,695.00	12,960.00	20.79
December	1,420.00	13,315.00	10.66
1972			
January	755.00	10,065.00	7.50
February	545.00	8,515.00	6.40
March	1,565.00	13,095.00	11.95
April	890.00	13,655.00	6.51
May	2,110.00	14,785.00	14.27
June	1,090.00	13,215.00	8.24
July	1,140.00	14,994.00	7.60
August	2,916.00	22,170.00	13.15
September	300.00	11,088.00	2.70
October	1,458.00	22,692.00	6.42
November	804.00	9,501.00	8.46
December	2,598.00	16,152.00	16.08

Month	Paid to Alexander Scrap Corp.	Total Monthly Payment Approved	% Paid to Alexandria Scrap
1973			
January	1,320.00	26,016.00	5.07
February	1,872.00	27,492.00	6.84
March	1,758.00	27,246.00	6.45
April	3,054.00	22,452.00	13.60
May	5,376.00	39,990.00	13.44
June	3,112.00	40,880.00	7.61
July	11,956.00	91,832.00	13.01
August	10,720.00	56,448.00	18.99
September	3,248.00	44,582.00	7.28
October	7,956.00	56,962.00	13.96
November	7,224.00	46,176.00	15.64
December	3,736.00	40,882.00	9.13
1974			
January	$21,534.00	$93,296.00	23.08
February	8,144.00	54,956.00	14.81
March	14,776.00	73,552.00	20.08
April	7,118.00	54,126.00	13.15
May	6,384.00	74,520.00	8.56
June	11,176.00	55,821.00	20.02
July	11,776.00	87,872.00	13.40
August	21,016.00	63,392.00	33.15
September	10,952.00	58,592.00	18.69
TOTALS: (1970-74)	$219,084.00	$1,595,622.00	13.73

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

TABLE II:

PERCENTAGE OF MONTHLY BOUNTY PAYMENTS
PAID TO UNITED IRON & METAL CO.
JULY 1, 1970 — SEPT. 30, 1974

Month	*Paid to United Iron & Metal Co.*	*Total Monthly Payments Approved*	*% Paid to United Iron & Metal Co.*
1970			
July	$ 2,410.00	$ 10,840.00	22.23
August	5,890.00	20,960.00	28.10
September	6,740.00	13,780.00	48.91
October	9,100.00	25,660.00	35.46
November	3,310.00	12,960.00	25.54
December	9,560.00	23,510.00	40.66
1971			
January	4,015.00	14,040.00	28.59
February	1,115.00	6,465.00	17.24
March	2,250.00	13,145.00	17.11
April	3,980.00	15,735.00	25.29
May	4,330.00	16,615.00	26.06
June	6,855.00	31,060.00	22.07
July	5,075.00	13,640.00	37.20
August	2,505.00	15,355.00	16.31
September	5,810.00	16,875.00	34.42
October	3,125.00	11,695.00	26.72
November	2,185.00	12,960.00	16.85
December	4,855.00	13,315.00	36.46
1972			
January	2,980.00	10,065.00	23.60
February	2,960.00	8,515.00	34.76
March	3,815.00	13,095.00	29.13
April	6,850.00	13,655.00	50.16
May	6,625.00	14,785.00	44.80
June	4,975.00	13,215.00	37.64
July	7,866.00	14,994.00	52.46
August	7,620.00	22,170.00	34.37
September	4,398.00	11,088.00	39.66
October	11,081.00	22,692.00	48.83
November	4,410.00	9,501.00	46.41
December	5,838.00	16,152.00	36.14

Month	*Paid to United Iron & Metal Co.*	*Total Monthly Payments Approved*	*% Paid to United Iron & Metal Co.*
1973			
January	15,828.00	26,016.00	60.83
February	15,918.00	27,492.00	57.93
March	15,276.00	27,246.00	56.06
April	12,906.00	22,452.00	57.48
May	15,804.00	39,990.00	39.51
June	17,084.00	40,880.00	41.79
July	35,426.00	91,832.00	38.57
August	19,872.00	56,448.00	35.20
September	21,998.00	44,982.00	49.04
October	22,540.00	56,962.00	39.57
November	25,632.00	46,176.00	55.50
December	13,530.00	40,882.00	33.09
1974			
January	37,984.00	93,296.00	40.71
February	20,308.00	54,956.00	36.95
March	38,216.00	73,552.00	51.95
April	14,586.00	54,126.00	26.94
May	25,568.00	74,520.00	34.31
June	22,293.00	55,821.00	39.93
July	37,688.00	87,872.00	42.88
August	15,288.00	63,392.00	24.11
September	22,016.00	58,592.00	37.57
TOTALS: (1970-74)	$618,289.00	$1,595,622.00	38.75

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

TABLE III:

Distribution of Monthly Bounty Payments Between Maryland & Non-Maryland Scrap Processors — July 1, 1970 — June 30, 1974

Month	Total Paid to Md. Processors	Total Paid to Non-Md. Processors	Total Monthly Payment Approved	% Paid to Maryland Processors	% Paid to Non-Md. Processors
1970					
July	$ 5,380.00	$ 5,460.00	$ 10,840.00	49.63	50.36
August	9,410.00	11,550.00	20,960.00	44.89	55.10
September	11,340.00	2,440.00	13,780.00	82.29	17.70
October	10,650.00	15,010.00	25,660.00	41.50	58.49
November	5,800.00	7,160.00	12,960.00	44.75	55.24
December	15,880.00	7,630.00	23,510.00	67.54	32.45
1971					
January	10,580.00	3,460.00	14,040.00	75.35	24.64
February	4,190.00	2,275.00	6,465.00	64.81	35.18
March	10,140.00	3,005.00	13,145.00	77.13	22.86
April	10,610.00	5,125.00	15,735.00	67.42	32.57
May	12,680.00	3,935.00	16,615.00	76.31	23.68
June	15,575.00	15,485.00	31,060.00	50.14	49.85
July	11,235.00	2,405.00	13,640.00	82.36	17.63
August	11,485.00	3,870.00	15,355.00	74.79	25.20
September	14,005.00	2,870.00	16,875.00	82.99	17.00
October	9,015.00	2,680.00	11,695.00	77.08	22.91
November	7,905.00	5,055.00	12,960.00	60.99	39.00
December	9,805.00	3,510.00	13,315.00	73.63	26.36
1972					
January	7,095.00	2,970.00	10,065.00	70.49	29.50
February	7,610.00	905.00	8,515.00	89.37	10.62
March	10,550.00	2,545.00	13,095.00	80.56	19.43
April	11,980.00	1,675.00	13,655.00	87.73	12.26
May	10,725.00	4,060.00	14,785.00	72.53	27.46
June	9,060.00	4,155.00	13,215.00	68.55	31.44
July	12,468.00	2,526.00	14,994.00	83.15	16.84
August	18,540.00	3,630.00	22,170.00	83.62	16.37
September	10,482.00	606.00	11,088.00	94.53	5.46
October	19,493.00	3,199.00	22,692.00	85.90	14.09
November	7,551.00	1,950.00	9,501.00	79.47	20.52
December	12,732.00	3,420.00	16,152.00	78.82	21.17

Month	Total Paid to Md. Processors	Total Paid to Non-Md. Processors	Total Monthly Payment Approved	% Paid to Maryland Processors	% Paid to Non-Md. Processors
1973					
January	24,180.00	1,836.00	26,016.00	92.94	7.05
February	21,534.00	5,908.00	27,492.00	78.32	21.67
March	24,540.00	2,706.00	27,246.00	90.06	9.93
April	18,342.00	4,110.00	22,452.00	81.69	18.30
May	28,576.00	11,414.00	39,990.00	71.45	28.54
June	31,500.00	9,380.00	40,880.00	77.05	22.94
July	76,508.00	15,324.00	91,832.00	83.31	16.68
August	40,656.00	15,792.00	56,448.00	72.02	27.97
September	38,246.00	6,336.00	44,582.00	85.78	14.21
October	43,820.00	13,142.00	56,962.00	76.92	23.07
November	38,216.00	7,960.00	46,176.00	82.76	17.23
December	32,946.00	7,936.00	40,882.00	80.58	19.41
1974					
January	69,848.00	23,448.00	93,296.00	74.86	25.13
February	43,596.00	11,360.00	54,956.00	79.32	20.67
March	56,376.00	17,176.00	73,552.00	76.64	23.35
April	43,234.00	10,892.00	54,126.00	79.87	20.12
May	60,128.00	14,392.00	74,520.00	80.68	19.31
June	43,109.00	12,712.00	55,821.00	77.22	22.77
TOTALS: (1970-74)	$1,059,326.00	$326,390.00	$1,385,716.00	76.44	23.55

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

TABLE IV:

Percentage of Monthly Bounty Payments Paid to Non-Maryland Processors Which Was Paid to Alexandria Scrap Corp July 1, 1970 — June 30, 1974

Month	Paid to Alexandria Scrap Corp.	Total Paid to Non-Maryland Processors	% Paid to Alexandria Scrap Corp.
1970			
July	$ 1,040.00	$ 5,460.00	19.04
August	3,210.00	11,550.00	27.79
September	1,250.00	2,440.00	51.22
October	2,470.00	15,010.00	16.45
November	1,330.00	7,160.00	18.57
December	1,870.00	7,630.00	24.50
1971			
January	1,650.00	3,460.00	47.68
February	605.00	2,275.00	26.59
March	1,495.00	3,005.00	49.75
April	2,105.00	5,125.00	41.07
May	1,430.00	3,935.00	36.34
June	1,350.00	15,485.00	8.71
July	1,335.00	2,405.00	35.50
August	1,345.00	3,870.00	34.75
September	540.00	2,870.00	18.81
October	1,565.00	2,680.00	58.39
November	2,695.00	5,055.00	53.31
December	1,420.00	3,510.00	40.45
1972			
January	755.00	2,970.00	25.43
February	545.00	905.00	60.22
March	1,565.00	2,545.00	61.49
April	890.00	1,675.00	53.13
May	2,110.00	4,060.00	51.97
June	1,090.00	4,155.00	26.23
July	1,140.00	2,526.00	45.13
August	2,916.00	3,630.00	80.33
September	300.00	606.00	49.50
October	1,458.00	3,199.00	45.57
November	804.00	1,950.00	41.23
December	2,598.00	3,420.00	75.96

Month	Paid to Alexandria Scrap Corp.	Total Paid to Non-Maryland Processors	% Paid to Alexandria Scrap Corp.
1973			
January	1,320.00	1,836.00	71.89
February	1,872.00	5,908.00	31.68
March	1,758.00	2,706.00	64.96
April	3,054.00	4,110.00	74.30
May	5,376.00	11,414.00	47.10
June	3,112.00	9,380.00	33.17
July	11,956.00	15,324.00	78.02
August	10,720.00	15,792.00	67.88
September	3,248.00	6,336.00	51.26
October	7,956.00	13,142.00	60.53
November	7,224.00	7,960.00	90.75
December	3,736.00	7,936.00	47.07
1974			
January	21,534.00	23,448.00	91.83
February	8,144.00	11,360.00	71.69
March	14,776.00	17,176.00	86.02
April	7,118.00	10,892.00	65.35
May	6,384.00	14,392.00	44.35
June	11,176.00	12,712.00	87.91
FY 1970-71	19,805.00	82,535.00	23.99
FY 1971-72	15,855.00	36,700.00	43.20
FY 1972-73	25,708.00	50,685.00	50.72
FY 1973-74	113,972.00	156,470.00	72.83
TOTALS: (1970-74)	$175,340.00	$326,390.00	53.71

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

TABLE V:

Percentage of Monthly Bounty Payments Paid to Maryland Processors Which Was Paid to United Iron & Metal Co. July 1, 1970 — June 30, 1974

Month	*Paid to United Iron & Metal Co.*	*Total Paid to Maryland Processors*	*% Paid to United Iron & Metal Co.*
1970			
July	$ 2,410.00	$ 5,380.00	44.79
August	5,890.00	9,410.00	62.59
September	6,740.00	11,340.00	59.43
October	9,100.00	10,650.00	85.44
November	3,310.00	5,800.00	57.06
December	9,560.00	15,880.00	60.20
1971			
January	4,015.00	10,580.00	37.94
February	1,115.00	4,190.00	26.61
March	2,250.00	10,140.00	22.18
April	3,980.00	10,610.00	37.51
May	4,330.00	12,680.00	34.14
June	6,855.00	15,575.00	44.01
July	5,075.00	11,235.00	45.17
August	2,505.00	11,485.00	21.81
September	5,810.00	14,005.00	41.48
October	3,125.00	9,015.00	34.66
November	2,185.00	7,905.00	27.64
December	4,855.00	9,805.00	49.51
1972			
January	2,980.00	7,095.00	42.00
February	2,960.00	7,610.00	38.89
March	3,815.00	10,550.00	36.16
April	6,850.00	11,980.00	57.17
May	6,625.00	10,725.00	61.77
June	4,975.00	9,060.00	54.91
July	7,866.00	12,468.00	63.08
August	7,620.00	18,540.00	41.10
September	4,395.00	10,482.00	41.95
October	11,081.00	19,493.00	56.84
November	4,410.00	7,551.00	58.40
December	5,838.00	12,732.00	45.82

Month	*Paid to United Iron & Metal Co.*	*Total Paid to Maryland Processors*	*% Paid to United Iron & Metal Co.*
1973			
January	15,828.00	24,180.00	65.45
February	15,918.00	21,534.00	73.92
March	15,276.00	24,540.00	62.24
April	12,906.00	18,342.00	70.36
May	15,804.00	28,576.00	55.30
June	17,084.00	31,500.00	54.33
July	35,426.00	76,508.00	46.30
August	19,872.00	40,656.00	48.87
September	21,998.00	38,246.00	57.51
October	22,540.00	43,820.00	51.43
November	25,632.00	38,216.00	67.07
December	13,530.00	32,946.00	41.06
1974			
January	37,984.00	69,848.00	54.38
February	20,308.00	43,596.00	46.58
March	38,216.00	56,376.00	67.78
April	14,586.00	43,234.00	33.73
May	25,568.00	60,128.00	42.52
June	22,293.00	43,109.00	51.71
FY 1970-71	59,555.00	122,235.00	48.72
FY 1971-72	51,760.00	120,470.00	42.96
FY 1972-73	134,026.00	229,938.00	58.28
FY 1973-74	297,953.00	586,683.00	50.78
TOTALS: (1970-74)	$543,294.00	$1,059,326.00	51.28

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

TABLE VI:

RANK OF LICENSED SCRAP PROCESSORS
ACCORDING TO TOTAL BOUNTY PAYMENTS
RECEIVED FOR THE PERIOD FROM
JULY 1, 1970 — SEPTEMBER 30, 1974

Rank	*Name*	*Location*	*Total Bounty Payments Received*	*% Share of Market*
1.	United Iron & Metal Inc.	Md.	$ 618,289.00	38.8
2.	Brooklyn Salvage & Waste Co.	Md.	282,298.00	17.7
3.	Alexandria Scrap Corp.	Va.	219,084.00	13.7
4.	Pollack-Abrams, Inc.	Pa.	128,983.00	8.1
5.	Maryland Metals, Inc.	Md.	118,211.00	7.4
6.	H. D. Metal Co., Inc.	Md.	61,335.00	3.8
7.	Shpak Auto Parts, Inc.	Md.	57,277.00	3.6
8.	Jos. Smith & Sons, Inc.	Md.	55,762.00	3.5
9.	Coatesville Scrap Iron & Metal Co., Inc.	Pa.	32,352.00	2.0
10.	United Auto Wrecking, Inc.	Md.	7,260.00	.5
11.	Brock's Scrap & Salvage Co.	Md.	4,594.00	.3
12.	Tube City Iron & Metal Co.	Pa.	3,597.00	.2
13.	Raimo Recycling Metal Co.*	Pa.	2,253.00	.1
14.	Montgomery Iron & Metal Co., Inc.	Md.	1,928.00	.1
15.	M. Glosser & Sons, Inc.	Pa.	1,339.00	.1
16.	Cambridge Iron & Metal Co.	Md.	1,060.00	.1
		TOTAL:	$1,595,622.00	

* Raimo is the corporate successor of Goldstan.

The source of this data consists of monthly reports of scrap processors' accounts payable, as prepared by Thomas E. Harris, Chief, Auto Wreckers Section, Motor Vehicle Administration of the State of Maryland.

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
GLEN BURNIE, MARYLAND 21061

PROCESSOR'S No.

DIVISION OF CONSUMER SERVICES S 000900

THIS LICENSE
EXPIRES
December 31, 1974

SCRAP PROCESSOR LICENSE

THIS IS TO CERTIFY THAT

SCRAP PROCESSOR 10.0 s000900
ALEXANDRIA SCRAP CORPORATION
2324 MILL ROAD P.O. BOX 902
ALEXANDRIA, VIRGINIA 22313

is hereby licensed as a "SCRAP PROCESSOR," in accordance with the provisions of Section 5-202 of Article 66½, Annotated Code of Maryland, for the purpose of processing iron, steel, and non-ferrous scrap metal and whose principal product is scrap iron, steel and non-ferrous scrap for sale for resmelting only.

THIS LICENSE
MUST BE
DISPLAYED IN VIEW OF
THE PUBLIC

EJNER J. JOHNSON,
Administrator.

VR-89 (10-73)

AFFIDAVIT OF ISADORE GITTLESON

Commonwealth of Virginia
City of Alexandria, To wit:

I hereby certify that on this day of January in the year 1975, before me, a Notary Public, personally appeared Isadore Gittleson who made oath in due form of law that the facts hereinafter stated in the numbered paragraphs below are true to the best of his knowledge, information and belief and that the numbered paragraphs below would constitute the substance of his testimony concerning those same facts, if he were called to testify at a trial of this cause.

1. He is the General Manager and Assistant Treasurer of the Alexandria Scrap Corporation (hereinafter referred to as the Plaintiff). He has personal knowledge of all aspects of the business operations of the Plaintiff and of the nature of the scrap processing industry in which Plaintiff is a participant, and he is competent to render testimony concerning those operations and that industry. In addition to himself, he states that Stanley J. Asrael, the President of the Plaintiff, has knowledge of these same facts and is also competent to testify thereon. Eva Potter, the Office Manager of the Plaintiff, has detailed knowledge concerning the compilation of the data contained in the various tables set out below.

2. Plaintiff is in the business of processing ferrous and non-ferrous scrap metal which is sold, either directly or through brokers, to primary metal mills which consume the processed scrap and convert it into primary industrial metals such as steel, iron, aluminum, brass and copper. Many of these primary metal mills are located in states other than Virginia, the site of Plaintiff's operations.

3. The scrap metal sold by Plaintiff is in the form of either shredded scrap metal or bales. In order to produce those forms of scrap, which are the only forms which are marketable to the primary metal mills, the Plaintiff first purchases raw scrap metal in the form of automotive hulks, scrap metal remnants of metal fabricating processes, and many other forms. This raw scrap is then quickly converted into processed scrap ready for sale by either compressing the raw scrap into bales in a hydraulic press or shredding the raw scrap into small chunks of metal by passing it through a shredding machine of substantial proportions.

4. The lifeblood of the scrap metal processing industry is old cars, which account for approximately two-fifths of the ferrous scrap which is eventually sold to steel mills and other consumers as "obsolete scrap". "Obsolete scrap" is composed primarily of processed automobile hulks and differs from "home scrap" and "prompt industrial scrap". Those latter two forms of scrap are composed of metal trimmings and remnants

from various manufacturing processes. The majority of the scrap processed by the Plaintiff is "obsolete scrap".

5. The primary source of Plaintiff's raw materials is trade in automobile hulks. A very substantial portion of the Plaintiff's trade in old cars is derived from Maryland, as indicated by the following table:

Month	*Total Auto Hulks Processed in 1974*	*Auto Hulks from Maryland Sources Processed in 1974 (%)*
January	4958	2528 (51%)
February	4471	2290 (51%)
March	6503	2541 (39%)
April	6509	3422 (53%)
May	5826	2335 (40%)
June	4381	1827 (42%)
July	3264	917 (28%)
August	6544	2747 (55%)
September	4994	1240 (25%)
October	5951	1755 (29%)
November	5951	1810 (30%)
December	3171	1597 (50%)

The preceding table represents the number of cars which were towed from places located within the geographic limits of Maryland to Plaintiff's scrap yard in Virginia. This count was derived from a tabulation of the documents of transfer which accompanied those cars delivered in 1974. All cars accompanied by Maryland Title Certificates were deemed to have come from Maryland. All cars accompanied by an Auctioneer's Bill of Sale (VR-46), Certificate of Disposal (VR-28) and police Certificate of Authority to Dispose of a Vehicle (VR-20) were also deemed to have come from within Maryland.

A somewhat different procedure was involved in accounting for motor vehicles submitted under an indemnity agreement. Those indemnity agreements submitted for a bounty payment to the Maryland Motor Vehicle Administration, and accounted for on the data processing printout received monthly from that Administration, were all deemed to have been submitted for

vehicles coming from Maryland, since no such agreement is submitted to the Motor Vehicle Administration unless the tower executing it is known to customarily haul from Maryland.

Not all of the vehicles submitted to Plaintiff under an indemnity agreement were submitted for the payment of a bounty, however, and those indemnity agreements remained on file in the Plaintiff's office and were separated by the month in which they were submitted. This monthly accumulation of indemnity agreements was further segregated by the towers' names and addresses. The towers were classified by the area from which they were known to haul, *i.e.,* Maryland, Virginia, District of Columbia, or on a regional basis encompassing two or more of those jurisdictions. All indemnity agreements submitted by Maryland towers were included in the count of vehicles derived from Maryland, and those submitted by Virginia and District of Columbia towers were excluded. In the case of a tower known to haul from two or more jurisdictions, only those indemnity agreements submitted by him which specified that the car came from Maryland were included in the count of Maryland cars. In cases where the tower was unknown to the Plaintiff, and where no point of origin was specified on the indemnity agreement, the agreement was not included in the count of cars derived from Maryland.

The figures in the column representing the number of cars coming from Maryland are the sums of the VR-46, VR-28, VR-20, Title Certificate forms on file and of the count of indemnity agreements compiled as described above.

6. Plaintiff has not sought to qualify to engage in business in Maryland. Instead, Plaintiff relies on auto wreckers and towers doing business in that State as its exclusive source of old cars from within Maryland. Plaintiff does not acquire automobile hulks in Maryland, but depends solely on interstate commerce for the acquisition of those abandoned and inoperable vehicles coming from Maryland. These vehicles are transported from Maryland by wreckers, towers and other vehicle

haulers across the Potomac River to Alexandria, Virginia, where they are purchased by the Plaintiff, if accompanied by adequate title documentation, for processing into scrap which is eventually sold to mills for further processing into primary metal.

7. Maryland automobile towers, as contrasted with automobile wreckers who are licensed and regulated by the State of Maryland, constitute an important source of supply of automobile hulks to the Plaintiff as illustrated by the following table:

VOLUME OF MARYLAND VEHICLES ACQUIRED IN CALENDAR YEAR 1974 FROM UNLICENSED TOWERS AND FROM LICENSED WRECKERS.

Month	*Total 8-Year Old Inoperable Vehicles Delivered*	*Delivered by Licensed Wreckers*	*Delivered by Unlicensed Towers*
January	2488	360	2128
February	2233	414	1819
March	2454	186	2268
April	3007	508	2499
May	2302	188	2114
June	1769	278	1491
July	853	276	577
August	2632	1489	1143
September	1211	579	632
October	1740	352	1388
November	1713	517	1196
December	1574	948	625

The figures set out in the foregoing table were derived by counting all vehicles submitted under Certificates of Disposal (VR-28) as having come from licensed wreckers exclusively. All other vehicles coming from Maryland and accompanied by other title documentation were deemed to have been delivered by towers since, to Plaintiff's information and belief, licensed wreckers rarely use documents of title other than the VR-28 forms. The VR-28 method of transferring title is not available to unlicensed towers.

8. The ability to acquire eight year old or older totally inoperable motor vehicles from Maryland — those vehicles for which a $16.00 bounty is payable merely upon the submission of an executed indemnity agreement accompanied by sufficient proof of destruction — is of crucial importance to the conduct of the Plaintiff's business. Competition among Maryland-licensed scrap processors for those vehicles is intense. That class of vehicles eligible for the bounty payable by that expeditious procedure accounts for 96%, on the average, of all vehicles acquired by the Plaintiff from sources within Maryland, as illustrated by the following table:

AMOUNT OF ALEXANDRIA'S MARYLAND COMMERCE IN AUTO HULKS CONSISTING OF EIGHT YEAR OLD OR OLDER TOTALLY INOPERABLE MOTOR VEHICLES FOR CALENDAR YEAR, 1974.

Month	*Auto Hulks Processed from Maryland*	*8-Year Old Totally Inoperable Motor Vehicles from Maryland (% of Maryland Auto Hulks)*
January	2528	2488 (98%)
February	2290	2233 (98%)
March	2541	2454 (97%)
April	3422	3007 (88%)
May	2335	2302 (99%)
June	1827	1769 (97%)
July	917	853 (93%)
August	2747	2632 (96%)
September	1240	1211 (98%)
October	1755	1740 (99%)
November	1810	1713 (94%)
December	1597	1574 (98%)

The count of the eight year old or older totally inoperable vehicles listed in the foregoing two tables was derived from a count of the indemnity agreements submitted by Maryland towers. An indemnity agreement is a sufficient document of title only for vehicles which are eight years old or older and totally inoperable.

9. The bounty payable by Maryland for the destruction of vehicles formerly titled in Maryland has had a profound effect on those scrap processors who depend, in whole or in part, on the steady flow of old cars from Maryland sources. Shortly after the institution of the bounty program by the Maryland legislature, those scrap processors who rely on the flow of automobile hulks from Maryland sources obtained the Maryland license in order to participate in the bounty program. This ready acceptance of regulation by the State of Maryland was not surprising since a licensed scrap processor relying on the payment of the bounty for the destruction of Maryland-titled automobiles was in a position to pay higher prices for scrapworthy vehicles from Maryland then those which could be offered by an unlicensed competitor.

10. In practice and before the amendment to the statute, the Plaintiff rebated $14.00 of the $16.00 bounty to the towers who transferred the eligible vehicle by means of an indemnity agreement. The $14.00 rebates was credited to the tower, but was paid by check only upon the actual receipt of the bounty payment from the State of Maryland. Other scrap processors paid an immediate cash rebate for such vehicles and assumed the risk that the bounty application would be accepted by the State.

11. Only a limited number of the unlicensed towers doing business with the Plaintiff requested the rebate. For reasons known only to themselves, certain towers neglected to participate in the bounty programs. Unlike licensed wreckers, these towers do not have a statutory right to a part of the bounty. Over the years, the Plaintiff developed a number of regular suppliers of bounty-eligible vehicles who regularly requested, and

received the bounty rebate. Those customers were steady sources of vehicles from Maryland. Their indemnity agreements, along with adequate proof of the destruction of the vehicle, were routinely accepted by the Maryland Motor Vehicle Administration for bounty payment.

12. The amendment to §11-2002.2(f)(5), effective on July 1, 1974, has drastically altered the market in eight year old or older motor vehicles formerly titled in Maryland. That amendment has made it impossible for the Plaintiff to offer the customary rebate of the bounty payable for those cars, while at the same time preserving the feasibility for scrap processors physically located in Maryland to continue to pay the bounty rebates. Starting in the month of July, 1974, the month in which the amendment took effect, the volume of deliveries to Plaintiff of eight year old or older, totally inoperable vehicles from Maryland transferred through indemnity agreements has diminished to the extent indicated by the following table:

Month	*Indemnity Agreement*	*VR-20 and Titles*	*VR-46*	*VR-28*	*Flattened Cars*	*Total*
January	1957	22	149	360		2488
February	1566	20	233	414		2233
March	2079	36	153	186		2454
April	2370	39	390	208		3007
May	1968	27	119	188		2302
June	1309	29	153	278		1769
July	518	7	52	276		853
August	849	40	154	1489		2632
September	471	23	128	579		1211
October	625	45	122	352	596	1740
November	786	46	94	517	350	1713
December	568	18	39	949		1574

* Flattened cars are received by Plaintiff in a semi-processed state and, in some cases, are not accompanied by any documentation.

13. More particularly, the Plaintiff has suffered a dramatic diminution in the number of bounty-eligible vehicles received from these unlicensed Maryland towers who participate in the bounty program. During the three months immediately prior to July 1, 1974 (April, May and June, 1974), Plaintiff acquired a total of *1,879* vehicles from an aggregate of eight unlicensed Maryland vehicle towers who were paid a bounty-enhanced price for the hulks. The Motor Vehicle Administration paid Plaintiff $30,064.00 in bounties for the destruction of those vehicles most of which was rebated to the towers who submitted the vehicles. During the next three months (July, August, and September, 1974), the Plaintiff acquired a total of *27* vehicles from those same eight towers and collected a bounty of $432.00, most of which was rebated to the towers who submitted the vehicles.

14. Further, a single tower in that group who delivered *691* of the bounty-eligible vehicles in interstate commerce from Maryland during the two month period prior to the effective date of the amendment, has delivered *none* to the Plaintiff since that date. This tower has instead dealt on an intrastate basis with Joseph Smith & Sons, Inc., a Maryland-based competitor for automobile hulks in the Prince George's-Montgomery County area.

15. The police Certificate of Authority (Form VR-20) is seldom relied upon as a means of transferring title to an abandoned motor vehicle. Prior to July 1, 1974, that document was seldom employed to dispose of a motor vehicle if the indemnity agreement method was available, that is, if the vehicle to be destroyed was eight years old or older and totally inoperable. That form, before July 1, 1974, was used, if at all, only if the car were less than eight years old or if the police had taken the car into custody.

Upon the enactment of the amendment to §11-2002.2(f)(5), the Plaintiff was advised by the Maryland Motor Vehicle Administration that the VR-20 forms were an alternative to the indemnity agreements formerly used by the Plaintiff's customers to establish

their claims to the bounty rebate offered by the Plaintiff. The Plaintiff advised its regular bounty customers only of this change in the law, and invited their further bounty business. These regular bounty customers were supplied with VR-20 forms, the detailed procedures for obtaining the Certificates of Authority were explained to them, and the customers were given a list of police departments where the Certificate could be obtained.

The response to this change of procedure was an almost total abandonment of Plaintiff by its former regular bounty customers. They nearly unanimously commenced disposing of their vehicles to Maryland scrap processors who could collect the bounty by submitting an indemnity agreement. New customers, after expressing interest in the bounty rebate and being told of the procedures necessary for obtaining it, became discouraged and pursued the matter no further.

Most of the former regular bounty customers have been lost entirely. Those few which remain have managed to work out individual arrangements with Maryland police departments whereby they may still participate in the program. One customer, because he was able to obtain a wrecking yard, became a licensed wrecker and participated in the bounty program as such. The customers who have not gone to those lengths to remain a bounty customer of Plaintiff have simply gone elsewhere where they could continue to operate much as they did in the past.

16. Much of the "obsolete scrap" which scrap processors buy is acquired from people who slip in and out of the market according to the fluctuation in prices being paid for automotive hulks. A price drop from $31.00 per ton to $20.00 per ton, for example, is enough to dry up the intake of old cars. Conversely, high prices for scrap encourage collecting from areas not usually considered sources of scrap.

17. The scrap processors are totally subject to the needs of the steel mills. Contracts to supply scrap to mills are of short duration — frequently no more than

30 days in duration, When the mills do not need scrap, there is no market for the processed scrap. When there is a demand for scrap, the mills pay no more than the current market price prevailing in the territory. Furthermore, if the price of scrap declines during the term of a contract, the mills often cancel and buy at the lower price. If the price of scrap increases during the contract term, however, the scrap processors are held to the original lower prices.

Because, unlike many other commodities, there is no central exchange or clearing house for scrap, its price is not easily ascertainable on a day to day basis. The price for a scrap is set by the mills, not the scrap processors. Consequently, the difference between profit and loss in the scrap processing business is buying old cars at the right price and at the right time.

18. The assurance that a bounty is readily available for the destruction of old cars is an immeasurable business advantage for those processors who can take advantage of it. First, the collection of the bounty offers a cushion against loss arising from a sudden drop in scrap prices — a not infrequent occurrance in the industry. Second, in times of scarcity of old cars when both the offering price is high and the competition for the available cars is sharpest, the ability to offer a rebate which is, in effect, an offer of a higher price without increasing the cost of the raw material to the processor; imparts a distinct competitive edge to those processors fully able to participate in the bounty program.

ISADORE GITTLESON

Subscribed and sworn before me this day of January, 1975 as witnessed by my hand and Notarial seal.

Notary Public

AFFIDAVIT OF THOMAS E. HARRIS

State of Maryland,
Anne Arundel County To wit:

I hereby certify that on this day of January in the year 1975, before me, a Notary Public, personally appeared Thomas E. Harris who made oath in due form of law that the facts hereinafter stated are true to the best of his knowledge, information and belief and would constitute the substance of his testimony concerning said facts if he were called to testify at a trial of the matter at bar.

1. He is the Chief, Licensing and Consumer Services Division, Motor Vehicle Administration, Department of Transportation, State of Maryland. He has personal knowledge of all aspects of the Motor Vehicle Administration's administration of Maryland's Abandoned Motor Vehicle Bounty Program. In that capacity, he has and continues to come into contact with scrap processors, licensed wreckers, unlicensed towers and others who participate in the program and members of various law enforcement agencies who assist in the administration of the program. He has been associated with the program since its inception and is fully aware of the Motor Vehicle Administration's understanding of the Legislature's intention as to how the relevant statutes should be construed and administered.

2. He has reviewed and approved the 17 pages of Appendix A hereof and has found them to be true and accurate statements of the facts they purport to represent.

3. He has reviewed and approved the 17 pages of Appendix Two hereof and has found them to be true and accurate statements of the facts they purport to represent.

4. The Motor Vehicle Administration construes Article 66½, §11-1002.2(f)(5) of the Annotated Code of Maryland (1970 Replacement Volume, 1974 Cumulative Supplement), as amended by Chapter 465, Acts 1974, effective July 1, 1974, to reflect, among other things, the Legislature's desire that the Motor Vehicle Administration not make a bounty payment to a scrap processor not located in Maryland for the destruction of a vehicle abandoned outside of Maryland.

5. Contrary to the assertion made by Mr. Isadore Gittleson in paragraph five of his Affidavit of January 16, 1975, prior to the effective date of Chapter 465, *supra*, plaintiff in the captioned matter submitted in connection with claims for bounty payments a number of indemnity agreements which indicated that the origin of the vehicle was the Police Department of the District of Columbia.

6. The records of the Motor Vehicle Administration indicate that the "single tower" to whom Mr. Gittleson refers in paragraph fourteen of the said Affidavit is probably the George Underwood firm which is a Maryland based concern, but which, prior to the effective date of the subject legislation, delivered to the plaintiff for ultimate claim of bounty payment a number of motor vehicles which had been abandoned in the District of Columbia, e.g. during the period beginning 3-5-74 and ending 3-8-74 said George Underwood his agents or servants executed approximately fifty-six indemnity agreements in each of which he certified, under penalty of law, that the origin of the vehicle was the Police Department of the District of Columbia, and each of which was ultimately the subject of a claim for bounty payment to the plaintiff pursuant to the indemnity agreement method.

7. That it is the practice of scrap processors participating in Maryland's Bounty Program to require their sources of scrap hulks to have the Vehicle Identification Number Plate detached prior to arrival of the vehicle at the scrap processor's place of business and to present the previously detached VIN plate with appropriate documentation whenever motor vehicle bounty is to be sought thereon.

8. That as a result of the practice described in the immediately preceding paragraph, on at least two occasions prior to July 1, 1974, the Motor Vehicle Administration was presented with a claim for motor

vehicle bounty payment to the plaintiff on the basis of a VIN plate and an indemnity agreement documenting the destruction of a vehicle which another scrap processor had also certified as destroyed as evidenced by the other processor's tracing of the serial number of the vehicle.

9. That as a result of the procedure described in the preceding paragraphs, until July 1, 1974 when the Motor Vehicle Administration developed a computer capability for comparing vehicle destruction reports, it was possible for the plaintiff to receive vehicles which had been abandoned outside of Maryland and which were accompanied by the VIN plates of other vehicles which had previously been titled in Maryland.

10. The Motor Vehicle Administration construes Article 66½, §11-1002.2(f)(5) of the Annotated Code of Maryland (1970 Replacement Volume, 1974 Cumulative Supplement), as amended by Chapter 465, Acts 1974, effective July 1, 1974, to require Maryland scrap processors to secure an indemnity agreement for the vehicles described therein regardless of whether or not a claim is to be made for the payment of bounty for the destruction of that vehicle.

11. The securing of a Police Certificate of Authority (VR-20) for the destruction of a vehicle eight model years of age or older and inoperable, abandoned in Maryland and previously titled in Maryland, involves submitting to a procedure which the Maryland State Police are able to complete in Montgomery, Prince George's, Charles, and Calvert Counties within an average of approximately seventy-two hours from the filing of the application therefor.

THOMAS E. HARRIS

Subscribed and sworn before me this day of January, 1975, as witnessed by my hand and Notarial seal.

Notary Public

LETTER OF JANUARY 14, 1975

Carl E. Eastwick, Esq.

J. Michael McWilliams, Esq.
Judson P. Garrett, Jr., Esq.

Gentlemen:

Re: Alexandria Scrap Corporation v. Hughes, et al. Civil No. K-74-1030

I write to confirm the understandings reached during a telephone conference with counsel on January 8, 1975. It is the understanding of this Court that counsel will attempt, to the very fullest extent possible, to stipulate to all relevant and material facts prior to the hearing before a three-judge court, which has been tentatively scheduled for 2:30 p.m. on January 31, 1975. I understand that Mr. Eastwick will submit to this Court, on or before January 15, 1975, a stipulation agreed to by both sides along with, in appropriate form, proffers and affidavits with regard to relevant and material facts concerning which counsel are not able so to stipulate; and that Mr. Garrett will respond to the same and will submit such counter-proffers as he desires to submit, on or before January 22, 1975. I further understand that any and all other documents, including memoranda of law, if any, which counsel wish to submit to this Court will be submitted by that latter date.

With regard to plaintiffs' motion for preliminary injunctive relief, both sides have agreed that that motion will be held and remain *sub curia* pending developments during the hearing on January 31, 1975.

Very truly yours,

FRANK A. KAUFMAN

P.S. Since dictating the above, I have received a letter dated January 9, 1975 from Mr. McWilliams requesting that the hearing scheduled on January 31, 1975 be rescheduled for February 7, 1975. I also have received Mr. Eastwick's letter dated January 13, 1975.

On January 13, 1975 Judge Haynsworth designated Judge Winter, Judge Miller and myself to hear this

case. Judge Winter will be in the Court of Appeals during the week of February 3, 1975. Accordingly, since Mr. McWilliams has informed this Court that he is ending a four-day arbitration case on the 31st of January involving arbitrators and lawyers from out of town, the hearing in this case will be held on Friday, February 14, 1975, at 3:30 p.m.

F.A.K.

cc: Honorable Harrison L. Winter
Honorable James R. Miller, Jr.

LETTER OF JANUARY 16, 1975

The Honorable Frank A. Kaufman
United States District Court
for the District of Maryland
Room 310, Courthouse
111 N. Calvert Street
Baltimore, Maryland 21202

Re: Alexandria Scrap Corporation v. Hughes, et al, Civil Action No. K-74-1030

Dear Judge Kaufman:

I am enclosing herewith two copies each of the executed Stipulation of Facts, and an unexecuted Affidavit which contains the proffers of fact submitted by the Plaintiff.

The original of the Affidavit has been sent to Alexandria for execution and will be filed with the Clerk as soon as it has been received by us in executed form. In the meantime, copies of this Affidavit, which constitutes our formal proffer in this case, have been furnished to counsel for the Defendants, as indicated on the Certificate of Service.

Two copies each of the Stipulation and Affidavit have also been hand-delivered to the offices of Judge Winter and Judge Miller.

I regret the brevity of the Stipulation and the length of the Affidavit. During conferences last month, counsel

for the Defendants verbally agreed to stipulate to some of the material now contained in the Affidavit. Unfortunately, counsel has since retreated from this verbal agreement for reasons not readily apparent to us. However, we understand that the Defendants will review the Affidavit during the coming week and will consider stipulating to those portions which are not genuinely in dispute.

On the latter subject, we previously extended an invitation to the Defendants last December to inspect the records of Alexandria Scrap Corporation in order for them to satisfy themselves as to the accuracy of the statistical data set forth in the Affidavit. By a copy of this letter we hereby renew that invitation. If counsel for the Defendants desires to accept this invitation, I would appreciate a telephone call in order that we may accede to any reasonable request prior to their filing deadline on January 22, 1975.

Respectfully yours,

CARL E. EASTWICK

CEE:ls
Enclosures
cc: Hon. Harrison L. Winter
Hon. James R. Miller, Jr.
J. Michael McWilliams, Esquire
Judson P. Garrett, Jr., Esquire

LETTER OF JANUARY 22, 1975

Carl E. Eastwick, Esq.

J. Michael McWilliams, Esq.
Judson P. Garrett, Jr., Esq.

Gentlemen:

Re: Alexandria Scrap Corporation v. Harry R. Hughes, et al. — Civil No. K-74-1030

I thank you for the "Stipulation of Facts" filed in this case. I note, however, that in the last sentence of the

first unnumbered paragraph on the first page of that document there is a statement which reserves to the parties the right to present additional proof under certain circumstances. While this Court can well understand that type of a reservation, this Court will also understand, unless it is notified to the contrary on or before January 31, 1975, that this case will be presented and argued on February 14, 1975 solely on the basis of the facts set forth in the said stipulation.

Very truly yours,

FRANK A. KAUFMAN

cc: Honorable Harrison L. Winter
Honorable James R. Miller, Jr.
Official Court File

LETTER OF JANUARY 24, 1975

The Honorable Frank A. Kaufman
United States District Court
for the District of Maryland
Baltimore, Maryland 21202

Re: Alexandria Scrap Corp. v. Harry R. Hughes, et al. — Civil No. K-74-1030

Dear Judge Kaufman:

I am writing in response to your letter of the 22nd in which you acknowledge receipt of the "Stipulation of Facts" and express concern regarding the last sentence of the first unnumbered paragraph on page one thereof in which the parties reserved "the right to present additional proof under certain circumstances."

I am also in receipt of a copy of a responsive letter from Carl E. Eastwick, Esquire, counsel for the plaintiff, who advises Your Honor, "the Plaintiff intends to present argument on February 14, 1975, solely on the basis of the facts set forth in the Stipulation and the Affidavit of Isadore Gittleson, filed in the above captioned case."

Please be advised that the defendants' intentions are similar, i.e., defendants intend to present argument on February 14, 1975, solely on the basis of the facts set forth in the Stipulation and in the Affidavit of Thomas E. Harris, it being defendants' understanding that the hearing which has been scheduled for that date will involve a resolution of the jurisdictional questions raised in defendants' Motion To Dismiss and a determination as to whether or not a future evidentiary hearing is needed based upon the extent to which the Court finds the Affidavits to demonstrate a difference as to material facts.

Respectfully,

J. Michael McWillians,
Assistant Attorney General,
Counsel to the Department
of Transportation.

cc: Honorable Harrison L. Winter
Honorable James R. Miller, Jr.
Carl E. Eastwick, Esquire

TRANSCRIPT OF PROCEEDINGS

[1] *In The United States District Court*
for the District of Maryland

No. 74-1030K Civil

Alexandria Scrap Corporation

v.

Harry R. Hughes, Secretary, Maryland Department of Transportation, et al.

Baltimore, Maryland
February 14, 1975

The above-entitled case came on for hearing before The Honorable Harrison L. Winter, Associate Judge,

U.S. Court of Appeals, Fourth Circuit; The Honorable Frank A. Kaufman, Associate Judge, U. S. District Court for the District of Maryland; and The Honorable James R. Miller, Associate Judge, U. S. District Court for the District of Maryland, at 3:30 o'clock p.m.

APPEARANCES

For the Plaintiff:

Norman P. Ramsey
H. Thomas Howell
Carl E. Eastwick

For the Defendants:

Judson P. Garrett, Jr.
N. Barton Benson

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[2] (Judge Winter) Good afternoon.

Gentlemen, I do not have a complete duplicate of the Clerk's file. Do we have cross motions for summary judgment in this case?

(Mr. Garrett) No, Your Honor.

(Mr. Ramsey) We do not, sir.

(Mr. Garrett) There are no motions for summary judgment. There is a motion to dismiss.

(Judge Winter) But each side in turn has offered data outside of the pleadings.

(Mr. Garrett) Yes, Your Honor.

(Judge Winter) Query, should we treat these as cross motions for summary judgment?

(Mr. Ramsey) If the Court please, I think that the way we visualized it at the time we were conferring with Judge Kaufman was that in addition to the complaint and the motion to dismiss, there is before the Court a motion for preliminary injunction, for preliminary injunctive relief, and it was in connection with the assemblage of data which might bear on that that we visualized the structuring of those.

Now, we did not file cross motions for summary judgment.

(Judge Kaufman) Mr. Ramsey, quite frankly, I did not catch up with this till last night. I had thought there [3] were going to be cross motions filed and that the argument today was going to be on the basis of both preliminary and final relief, with the understanding that if any of the disputed facts were considered material and relevant by the Court, then the Court would determine whether or not any evidentiary hearing was necessary and how it would be held.

(Mr. Ramsey) Well, Your Honor, and Judge Winter and Judge Miller, our reaction to it was we were conscious of the procedural posture of the case and we thought that possibly the same thing could be accomplished by addressing ourself to the motion to dismiss and to the motion for preliminary injunction within the framework of what we must demonstrate in order to get preliminary relief, and then the Court could take the situation in hand as respects that aspect of it and if we proceed to final relief, it would only require a finalization of the record in the form of an answer and/or a motion for summary judgment in connection with the stipulated or the memorialized facts in affidavits.

(Judge Kaufman) Would it be satisfactory then from the point of view of both sides to consider today that you are orally stating motions for summary judgment, in the event that the Court does not consider it necessary to go further into the disputed factual areas?

(Mr. Garrett) Your Honor, it is our contention that there is a dispute as to material fact.

[4] (Judge Kaufman) I know, but suppose the Court came to a different conclusion.

(Mr. Garrett) Fine. Then I think the Court could grant summary judgment on the basis of the pleadings at this point. The state would not want to move for summary judgment though, because we would necessarily have to concede in doing so that there is no dispute as to material fact.

(Judge Kaufman) You could do it in the alternative if you wanted, which is what I did suggest to you.

(Mr. Garrett) Yes, Your Honor. My understanding, I think, of what Your Honor had told us in proceeding in this, it would reach the same result, and that is the motion to dismiss would come on for hearing today and that the Court would compare the affidavits to see if there was a dispute as to material fact.

If the Court found that there was and determined that it should deny the motion, then it would schedule an evidentiary hearing.

If the Court determined that there was no dispute as to material fact, then the Court would go on to decide the matter on the merits on the basis of our motion to dismiss supported by affidavits.

With respect to the preliminary injunction, I had asked the Court if the State should respond to that motion, and the Court had indicated that we need not because in the [5] Court's view, if the Court found that there was a dispute as to material fact, then it would necessarily follow that the Court would not be able to find that there is a likelihood of success on the merits and would not be able to issue the preliminary injunction.

So we have not responded to that motion.

(Judge Winter) The difficulty I have is certainly from the standpoint of the plaintiff, the case has been thoroughly briefed, and I do not know whether the State thinks it would have any additional authorities that would be of help to us in deciding the case, but from the standpoint of judicial efficiency, I think we would like to proceed to a final adjudication if we can.

Now, if technically all we are talking about is a motion to dismiss and technically all we are talking about is a motion for preliminary injunction, this certainly does not permit us to deal with the case dispositively on the merits because the tests are quite different.

The plaintiff does not have to demonstrate the invalidity of the statute as such in order to be entitled to a preliminary injunction. The most it has to establish is

reasonable likelihood or substantiality of it, and it seems to me we go through an awful lot of wasted motion.

I just wonder if both sides would not be willing to submit the case to the Court, on the argument about to be [6] had, on the merits, but let it be understood that if in the course of argument or in the course of the Court's deliberations, either you or we find that there are factual aspects that are unresolved and that may be determinative, that we are not going to foreclose you from presenting additional proof.

(Mr. Ramsey) We could approach it that way, sir, because in fact the only claim conflict, as we see it, between the affidavits we would contend to be immaterial as respects the disposition of the issue, so accordingly we have in effect framed our thinking as though we were arguing to a motion for summary judgment.

And we realized that we had at the outset the question of legal sufficiency of the claim in the first instance, then we would have arrived at an argument as respects the sufficiency of the case for final disposition, and we would anticipate that our argument would be that if preliminary follows and the facts are immaterial, we would be entitled to summary judgment.

So we can deal with it in that context, if that is agreeable to the State.

(Mr. Garrett) Your Honor, the State would have no objection to going forward on that basis as long as the Court would recognize our strong position that we view this as there being a dispute as to material fact, and should the [7] Court disagree with us and decide the case on the merits against us, we would want that issue preserved for appeal.

(Judge Winter) Of course, it ought to be preserved for appeal. Could you in your argument give us a short summary or precise—

(Mr. Garrett) Yes, Your Honor.

(Judge Winter) —of the material facts which you think you would dispute? This would help preserve your right

in the record, but I think more importantly would call to our attention the area of the facts in which there may be room for fact finding, if we think that this has a direct bearing on the result to be reached.

(Mr. Garrett) Fine.

(Judge Winter) All right. If that be so, then I would assume, gentlemen, that we will proceed on that basis and that the plaintiff has the right to open and close.

* * * * * *

[41] (Mr. Garrett) May it please the Court, at the outset I'll make some comments regarding the workings of this statute, at least how it is administered and how we feel it should be administered.

First of all, I think it is true that the statute does not specifically provide that vehicles must have been adandoned in Maryland in order to qualify for the bounty. However, we have all seen cases in which the Legislature has not expressly provided a prohibition but the history and the obvious purpose of the statute is seen and read and held to imply such a condition.

Now, what is this statute all about?

The history of it indicates, the reports indicate that Maryland was concerned about abandoned vehicles, not about the scrap industry primarily. We wanted to move these hulks that were road hazards, that were hazards to the environment. The Court of Appeals even cited, I think, vermin cropping up in some of these hulks.

[42] So we had an environmental problem. We wanted to move these things out. This was not an attempt to subsidize scrap processors.

Now, I submit that the Maryland Legislature was not interested in cleaning up the roads of D. C. I submit the General Assembly of Maryland feels no greater obligation to the District of Columbia than the District of Columbia or Virginia feel to Maryland in this regard.

I point out that we have what is a unique program in this country. We are the only state that pays this sort of a bounty, so I think it is very important to keep that in

mind. It is an obvious fact that can be overlooked, it is so obvious.

(Judge Miller) How does this amendment prevent the picking up of vehicles that were abandoned someplace else? It seems to me if that is what they want to do, the amendment would have said that, not something else.

(Mr. Garrett) What we have is an eleventh-hour, in-the-halls handwritten amendment, and I'm prepared to present witnesses—

(Judge Winter) That can cut two ways.

(Mr. Garrett) That's right, they cut both ways, but, you know, in the legislative experience, what we had was this.

The history of this is that at the outset, bounties [43] were being paid and the statute was being enforced literally and no more. The Motor Vehicle Administration was not requiring a showing that the vehicle be abandoned in Maryland. They were checking the VIN plate against their computer and if it had been formerly titled, they paid off, assuming everything else was appropriate and in order.

The scrappers found they had a problem, and that was they could not rely on the sources of their hulks. Scrappers in some instances were raided. I think there was a case that got national recognition out of Montgomery County in which somebody destroyed an antique vehicle. I don't know whether there was litigation that came out of that or not, but it hit the press.

Scrappers started requiring indemnity agreements. Scrappers then decided that they wanted the Legislature to say that you had to give a scrapper one of these agreements if you didn't have some other form of documentation permitted by the statute.

So they stuck a bill in, and the bill applied across the board to all scrappers.

It dawned on somebody at that point that it is possible for out-of-state scrappers to recover abandoned cars out of state, for example in the State of Virginia or

in the District of Columbia, and run them through MVA and secure bounty payment.

[44] The Legislature decided that the way to cure this was to deal with the indemnity provision proposal it had before it at this point in the legislative session, so what they decided was this.

With regard to all of these other forms, although this doesn't hold for titles but as the Court pointed out, we don't have an eight-year-old car title problem, there aren't that many.

In the police certificate situation, you are dealing of necessity under the statute by definition with a Maryland police agency that has to certify the car was abandoned in its jurisdiction. We don't have that problem of the police certificate.

With respect to the auction provision, that is not any entrepreneur or auctioneer. Under the statute, that's a governmental auction, which requires certain kinds of notice, so it's a limited type of auction that takes place in Maryland.

We don't honor any of these certificates from out-of-state cities under the auction certificate process. That's limited to Maryland.

The big loophole was the cars that come in with the indemnity agreement, so they did what I have told them afterwards — I wasn't there at the time, nobody from the office was there. They wrote what is a very bad statute in terms of draftsmanship, but they dealt with the bill they had [45] at that point in the Legislature.

(Judge Miller) But if that was their purpose, it does not accomplish it.

(Mr. Garrett) Well, it does this immediately, Your Honor—

(Judge Miller) Isn't it true that under this amendment as it now stands, under the statute as amended, an in-state processor can get a car from an unlicensed tower from outside the state and get the bounty right now under this statute?

(Mr. Garrett) That's right.

(Judge Miller) That is not prevented at all. So how can you say that this prevents the picking up of automobiles outside of the State of Maryland?

(Mr. Garrett) Well, first of all, as has been alluded to earlier, there is a point of no return here. The cost of shipping these things is such that they're only going to come from distances relatively close to Maryland.

We believe the Legislature decided, perhaps unwisely, that while they could indulge a presumption that plants located in Maryland were drawing all or the majority of these kinds of hulks from Maryland, they would not indulge that kind of a presumption with regard to out-of-state scrappers.

(Judge Miller) Where is the legislative history that shows that this was the purpose of the—

(Mr. Garrett) Of the amendment?

[46] (Judge Miller) Right.

(Mr. Garrett) We have none. There is no legislative history in Maryland, unfortunately.

(Judge Miller) I understand that. So if the amendment does not accomplish the purpose which you say was the purpose of the amendment, then where are we?

(Mr. Garrett) Well, Your Honor, where we are is that in regard to equal protection, it's not even necessary that the Maryland Legislature had thought this. The Court can go on any rational basis that the Legislature might have used, whether it used it or not.

We submit, although the cases that I read do not deal with this under the Commerce Clause, in dealing with the reasonableness of the burden under the Commerce Clause, that this is also true, that the burden is not upon a state to show what was in the minds of the General Assembly, that can't be demonstrated, but that the Court will look to what might have been in the minds of the Assembly and if it's reasonable, it's reasonable, however unwise.

Now, we submit that that's what they did in this case.

(Judge Miller) Is that the only reason that you can come up with for the amendment?

(Mr. Garrett) I happen to know that that's why it happened the way it happened. Now, we believe that the Motor [47] Vehicle Administration should deny, and were we not in litigation, the Attorney General would be informing them by formal Opinion that they should refuse to pay a bounty on any vehicle abandoned outside of the State of Maryland and that they should adopt a regulation which requires some sort of demonstration—

(Judge Winter) There is no such regulation now?

(Mr. Garrett) There is none at this point in time.

(Judge Miller) The indemnity agreements that the in-state processors use do not show where they pick up the cars, do they?

(Mr. Garrett) No, Your Honor, they do not.

(Judge Kaufman) Even if that is the purpose and even if you assume arguendo that it is, when you step back from this statute as it exists since the 1974 amendment, don't you come up with the following?

If Alexandria Scrap wanted to set up a separate processing plant in Maryland or buy a small processing plant in Maryland, at that point it could utilize that small processing plant or its plant in Alexandria and take the cars to either plant and get the bounty; isn't that correct?

(Mr. Garrett) If we adopted that sort of regulation—

(Judge Kaufman) Isn't that what you have in effect today?

[48] (Mr. Garrett) First of all, today we license locations, so the fact that a firm has a Maryland location does not necessarily mean that we will accept payments on the basis of cars destroyed at other locations.

(Judge Kaufman) What do you do in practice? The record does not make this clear and perhaps this would have to be established in the record before we could

base an opinion on it, but we all know that there are scrap processors in the State of Maryland that have plants in other states.

Now, are you careful to check to make sure before you pay a bounty that the processing is done in Maryland? If you do, then why do you do it? Why do you care where the processing is done by the processor, as long as you get the car destroyed and off the dump heap?

(Judge Miller) Plus the fact that for other cars, they are obviously not processed in Maryland. The automobile sale cars and the auction cars can be processed outside the state.

(Mr. Garrett) The automobile sale car could be processed outside the state, but we are almost never talking about that with regard to the car which is eight years of age or older, and that's the only car for which you can use an indemnity agreement, so the bill of sale situation really isn't applicable here.

(Judge Winter) Except that the construction of the [49] Equal Protection Clause, Mr. Garrett, cuts both ways. It is not only what is done under a statute but it is what may be done—

(Mr. Garrett) Yes, Your Honor.

(Judge Winter) —irrespective of whether it is done in any consequential amount or not.

(Mr. Garrett) Yes, Your Honor.

Our practice until this date has been that we have licensed the locations to which plaintiff's counsel have referred. It may well be a fact that there is a Maryland firm with locations elsewhere. I was not aware of that. My understanding is that that firm is licensed only for its Maryland location and that we will pay bounty only for the cars that it destroys at that location, because it is obvious—

(Judge Winter) Except you do not ask him where he destroyed it.

(Mr. Garrett) We don't ask him—

(Judge Miller) You do not ask him where he destroyed it and you do not ask him where it was picked up.

(Mr. Garrett) Your Honor, we do require him to make an assertion that he is operating at X location. The regulations are specific about licensing a location. We require an assertion that he has destroyed it, I believe if not explicitly, implicitly, at that location.

We would not accept a request for payment on the [50] basis of a certificate of destruction that showed the car was destroyed in Charleston, South Carolina, because obviously they are not going to take a car to Charleston, South Carolina from Maryland.

(Judge Kaufman) Suppose a Maryland car is picked up down there and it has got a Maryland certificate on it. Aren't you required under the law to pay the bounty?

(Mr. Garrett) I don't think we are. I think the Legislature only intended that we clean up the streets of Maryland.

(Judge Miller) But that is not what the statute says.

(Mr. Garrett) No, it doesn't, and it would be better that it did say that, but that doesn't mean that this Court can't hold that as the clear implication of that statute and the intent of that statute.

(Judge Miller) If the purpose was that you could only pay a bounty on cars abandoned on the streets of Maryland, it seems to me it certainly would have been a lot easier to say that. You could have said that in about three words instead of the 15 or 20 sentences that you have in it.

(Mr. Garrett) I agree with Your Honor. We could have said it much more clearly.

(Judge Kaufman) As a matter of practice, does the State of Maryland send inspectors into the processing plants [51] for the purpose of trying to make sure that the processor who is operating under the indemnity route with the eight-year-old or older car is not engaged in handling illicit traffic?

(Mr. Garrett) I understand that they are audited.

(Judge Kaufman) Do you audit their records, or do you physically inspect the processing plants?

(Mr. Garrett) They inspect the plants. They do not go out with the request for a bounty payment and try to determine whether or not there was such a vehicle. Other than the annual—

(Judge Kaufman) What do they do when they inspect a plant?

(Mr. Garrett) With the Maryland plants, my understanding is that they make a physical inspection of the entire location.

(Judge Kaufman) For what purpose? What do they do when they get there?

(Mr. Garrett) They're first of all assessing as to whether or not these vehicles have been around on more than a six-month basis. There is this penalty that's involved.

They're also reviewing the records to try to determine if there are any irregularities with respect to the records that are kept and if they conform to the records of the Administration.

(Judge Kaufman) Leaving aside the record keeping [52] inspection, which could go on by simply inspecting records that were required to be kept in Maryland, what kind of physical inspection of the processing, plant in and of itself, as opposed to inspection of records, is either performed or is required?

(Mr. Garrett) Your Honor, I'm not aware of any. I must admit I haven't inquired into that, and I fail to see the pertinence of it.

(Judge Kaufman) The reason I think it is pertinent is that you might argue that if there is need to inspect the processing plant, then there is a legitimate Maryland interest in the 1974 amendment, in that to send inspectors outside of the State of Maryland where they would not be supported by the State Police and have the back-up that inspectors have within their own jurisdiction, that that would provide a proper basis.

But if there is no need to inspect physically the plant and all you need to do is to inspect the records, then I fail to see any reason that you have given up to now

why you should burden interstate commerce in the manner that it seems to me Mr. Ramsey and Mr. Howell rather persuasively argue you are doing.

(Mr. Garrett) Very well, Your Honor, let me respond to that.

The only way we are able to turn up evidence of wrongdoing with respect to the bounty program is through an [53] examination of records. We cannot after the fact determine whether or not X vehicle was destroyed. It is literally no longer in existence so we have to look at the documentation. That we do examine.

We have a regulation which requires that there be an office, and in fact the statute requires that there be an office in Maryland, and a regulation, which we have not enforced, which could require that records be kept there.

(Judge Miller) That you have not enforced?

(Mr. Garrett) No, Your Honor, we have not. The out-of-state processors indicated to us that it would be quite a burden for them to have to duplicate their records, that they needed records at their plant locations and to have to duplicate those and put them in Maryland would be an unreasonable expense, or at least a burdensome one.

(Judge Miller) Are you saying that you could have performed your necessary duty equally as well by looking at the records that they could have been required, and which by your own regulation they really are required, to keep in Maryland as you could have done by going to the plant itself?

In other words, you could do it as easily by looking at the records as you could by looking at the plant; is that right?

(Mr. Garrett) I think we would prefer to look at the plant.

[54] (Judge Winter) But your preference is because you will not be able to take an inventory on what is left there and assert the appropriate tax insofar as

determining whether vehicles had been properly destroyed.

(Mr. Garrett) We don't tax our-of-state locations, Your Honor. The tax is only on Maryland locations, so we have no taxing interest with regard to Alexandria.

Our interest with regard to Alexandria is whether or not they are destroying the vehicles that they indicate to us they're destroying. Our only contact with them is over payment of the bounty.

(Judge Miller) But I thought you said a few moments ago that you really do it by looking at the records.

(Mr. Garrett) Yes, Your Honor.

(Judge Miller) That is not just for the out-of-state, that is for the in-state too.

(Mr. Garrett) That's correct.

(Judge Miller) That is the way you do it. You do not do it by looking at their plant.

(Mr. Garrett) My understanding is that with the in-staters, we also look at the plant because we have other requirements for them, but we do not see our enforcement requirements or enforcement powers as being available to us with plants located outside of Maryland, so as to those plants, we are simply making sure that they are dealing honestly with [55] us when they ask for the payment of a bounty.

With regard to these other plants, we have a statute and regulations that say you have to have X equipment, et cetera.

(Judge Kaufman) Don't you require that they keep the plate that bears the serial number and the motor number?

(Mr. Garrett) We require that they submit that to us. They submit that to us.

(Judge Kaufman) When they turn that in, that in itself gives you pretty good proof, does it not?

(Mr. Garrett) That is the heart of our factual dispute. The system, as we understand it and as we are prepared to offer testimony on, is that when the hulks arrive at

the scrapper's plant, when they come to his front gate, they do not have the VIN plate physically attached.

(Judge Winter) What do yo call it? The VIN plate?

(Mr. Garrett) I'm sorry, Your Honor. V-I-N, vehicle identification number.

(Judge Winter) Thank you.

(Mr. Garrett) That plate has been detached before they get to the scrapper. I am told that the reason for this is that the flow of these vehicles is so large that many locations simply could not afford to have these hulks stacked up, particularly downtown locations, so the practice is that these plates are detached before the wrecker or tower brings [56] them to the plant.

Now, that means that the plant, acting in good faith, cannot demonstrate that the vehicle is actually the vehicle from which this VIN plate came.

Now, we maintain that in order to prevail in this case, the plaintiff has to show that there has been a substantial decrease in the number of vehicles flowing out of Maryland and to the plant, and we maintain that it is impossible for them to demonstrate that.

Their records are based on VIN plates which have been handed to them, and that's the reason that we cite in our affidavit two instances in which different operations claimed the same vehicle.

We know that two instances in themselves are not significant. Those are duplications of claims for the same vehicle, but what they demonstrate is an unknown iceberg of the number of vehicles never titled in Maryland that may show up at a plant's location with a Maryland VIN plate. It's a great way to get rid of a stolen vehicle.

(Judge Miller) But have you determined how many duplications of VIN plates there were in Maryland, in state?

(Mr. Garrett) We have no way — I'm sorry. Duplications in terms of the number of claims?

(Judge Miller) Yes.

(Mr. Garrett) I have not determined that fact, [57] because I simply wanted to demonstrate that cars were arriving without their rightful VIN plate to the plant.

(Judge Miller) But what I am getting at is I do not see really what difference it makes whether it is out of state or in state. That problem would exist no matter where the plant is, would it not?

(Mr. Garrett) What I'm saying now, Your Honor, is that in terms of burden of proof, the plaintiff is going to have to convince this Court that in fact X number of cars came out of Maryland prior to the effective date of the Amendment and that since July 1, X minus Y number of cars have come out of the State of Maryland.

And I'm saying to Your Honors in all sincerity the records of the plaintiff and the records of the Motor Vehicle Administration cannot demonstrate that.

(Judge Kaufman) Why would the plaintiff have to do that if the statute facially places an unfair burden, an unnecessary burden on interstate commerce or facially establishes a classification that cannot withstand an equal protection challenge?

What several of us have been trying to find out from you is: What do you get out of any physical inspection of the plant?

Now, if I understood you correctly, you said the VIN plate — by the way, Judge Winter just asked here at the [58] Bench what the N stands for in V-I-N.

(Mr. Garrett) V-I-N, N as in number.

(Judge Kaufman) Vehicle identification number.

(Mr. Garrett) Vehicle identification number, yes.

(Judge Kaufman) Now, if that plate is taken off before the wrecker or tower takes the vehicle to the plant, what are you going to discover anyhow when you inspect at the plant other than the number of vehicles that are there and how long a particular vehicle has been there? Your identity is gone anyhow.

(Mr. Garrett) Your Honor, first of all, I agree that if the statute is facially unconstitutional, it does not matter how many cars are involved.

Now, we take the position that the statute is not. We have a legal position on that.

(Judge Kaufman) Let me cut through now.

(Mr. Garrett) I really am trying to be responsive.

(Judge Kaufman) Just to get to this point that we have been close to several times and then backed away from, assume arguendo that this Court comes to the conclusion that prima facie there is a burden placed on interstate commerce that is unnecessary and that prima facie there is a suspect classification and that therefore the Court comes to the State and asks, What is the need for you to have the 1974 amendment, why do you need it, and you said one of the reasons— [59] or perhaps some of us have put the words in your mouth and you do not want them there and if so, please throw them back.

(Mr. Garrett) Okay.

(Judge Kaufman) But I have understood you to say that one of the reasons was you want the opportunity to inspect at the plant.

Now, you do not need to inspect at the out-of-state plant because you do not penalize the out-of-state processor for keeping a wreck around over six months.

Now, I thought there might be a reason to inspect to make sure that the car was not a stolen car or that there was not some kind of an illicit transaction going on, but you have now told us that as a practical matter, the VIN plate is off the vehicle before it gets to the processor.

(Mr. Garrett) Yes, Your Honor.

(Judge Kaufman) Therefore, what do you accomplish in terms of inspection of the processor's plant as opposed to inspection of the records?

(Mr. Garrett) First of all, Your Honor, the amendment had nothing to do with inspection and in no way changed what takes place with regard to inspection. I believe that's our difficulty.

Both before and after the amendment, we have inspected in-state scrappers in one way, we have

inspected out-of-state scrappers in another way, and the difference [60] between those two reflects the fact that the statute places upon the Administration certain duties with regard to in-state scrappers beyond assuring that the bounty is being paid properly, whereas with regard to out-of-state scrappers, that is our only responsibility and our only interest.

Now, with regard to the burden, either the statute is facially unconstitutional or it's not. The burden, I submit, is really a factual determination in Commerce Clause cases. It's really difficult to look at this thing and decide it's unconstitutional if there is no burden in terms of actual numbers of cars.

I submit if the parties stipulated that the plaintiff had only lost on the average of two cars a month, the Court would say it is not unconstitutional. It literally boils down to that kind of a judgment in this case with respect to deciding whether or not there is an undue burden.

In a Supreme Court case that the plaintiff cites with approval, Hood v. Dumond, Mr. Justice Jackson, after citing several cases, said at 336 U.S. 531 and 532:

"It recognized," and he's citing several cases, "as do we, broad power in the State to protect its inhabitants against perils to health or safety, fraudulent traders and highway hazards, even by use of measures which bear adversely upon interstate commerce."

Now, the suggestion that we can't affect interstate [61] commerce adversely is just not true as a matter of law. We can. The question is—

(Judge Miller) Nobody is suggesting you cannot, but the point is that if you do, there has to be some pretty good justification.

(Mr. Garrett) There has to be a reasonable basis for it, yes, Your Honor.

Now, first of all, if I may we take the threshold position and quite seriously, that we are not subject to the Equal Protection Clause and the Commerce Clause in this situation, and I'd like to speak to that for just a second.

It is true, as the plaintiff points out, that the General Assembly in enacting this legislation has exercised a police power, no doubt about it, and the Court of Appeals said so.

But the Legislature can exercise both powers at the same time. It's not limited to exercising one or the other.

What is the dispute in this case about? Maryland has said, We will pay bounties to in-staters under these circumstances and to out-of-staters under these circumstances. Maryland is not, as with most of the Commerce Clause cases relied upon by the plaintiff, saying hulks are coming out of the cycle of interstate commerce. Maryland is not saying, You can't bring hulks into Maryland or you can't take them [62] out or we're going to tax you unreasonably upon that exercise.

We're not setting up any kind of a monopoly here for the State of Maryland. As a matter of fact, I suggest that we could achieve the same thing more clearly by giving some kind of a corporate tax rebate on these. There would be no doubt that we could do that for in-state corporations and would not have to do it for out-of-state corporations. We could perhaps do it on the basis of the assessment that we levy on these right now.

So what I'm saying is I don't think there's any question that Maryland could limit this bounty first of all to vehicles abandoned in Maryland, and that although that might affect interstate commerce, that effect would not be an unreasonable burden simply because it affected interstate commerce.

We clearly are acting not under a subterfuge but as a result of a real concern and a real public-health kind of problem.

(Judge Miller) You probably could limit it to vehicles abandoned in Maryland, but that is not what this amendment does.

(Mr. Garrett) We think it does. Whether it does it as well as it could be done or not is another argument, but this statute says—

(Judge Miller) An in-state processor can get money [63] for a car picked up outside of the State of Maryland under this amendment; isn't that correct?

(Mr. Garrett) I think not. I tell Your Honor that the Motor Vehicle Administration has administered it on this basis. When I became involved in this case, I pointed that out to the Administration, and were it not for the Attorney General's policy against issuing Opinions on subject matters which are also before the Courts at the same time, we would be telling them that the clear intent of the Legislature is that we clean up the streets of Maryland only and that they must require some kind of—

(Judge Miller) But that is because of a regulation that you are saying has apparently been adopted, although there is not any regulation, there is just a policy or something like that and it is not written anywhere.

But in any event, it is not because of the statute, it is because of some policy, because the statute does not say anything one way or the other on it.

(Mr. Garrett) No, I must differ, Your Honor. You are testing the statute in this case and the statute includes not only the words that the Legislature enacted but their intention.

(Judge Miller) But the problem is: Where do you get the intention from? Apparently there is not a regulation which would interpret it that way and there are no words in [64] the statute which say that. It is only what you are saying.

(Mr. Garrett) No, we have submitted a Legislative Council report or two that show the history of this and what the concern of the Legislature was, and I think a reasonable man could conclude from that that the General Assembly's concern was limited to Maryland's highways and byways. I don't think there is any doubt about that. It is implicit, it is not explicit, but it's still part of the statute.

(Judge Miller) What I am getting at is that your policy of paying only for automobiles abandoned in Maryland exists whether this statute was amended or was not

amended. Isn't that true? The amendment of this statute did not enhance or take away from the policy which you say is the policy; isn't that right?

(Mr. Garrett) That's absolutely right.

(Judge Miller) All right. Then how can you use this amendment to say that this somehow means that you cannot pick up automobiles that were abandoned someplace else?

(Mr. Garrett) Given that implication in the statute, what the amendment then does is make it more difficult for people to lie to us, to commit perjury.

(Judge Miller) Why?

(Mr. Garrett) Because the amendment says that you can't come in by means of an indemnity agreement if you're out of state. The amendment in effect—

[65] (Judge Miller) I do not think out-of-staters have a monopoly on perjury.

(Mr. Garrett) No, we're not saying that, Your Honor. All we're saying is that we're presuming on the basis of physical location that you are more likely to get vehicles from outside of Maryland if you're located outside of Maryland, and you're more likely on the basis of physical location to get vehicles from inside of Maryland if you're located inside of Maryland.

Now, if that doesn't stand the test of rationality, it's clearly unconstitutional, assuming the Court finds that the Equal Protection and Commerce Clauses apply to us in this situation, and again we strongly maintain that what we're doing with regard to bounty money is not an exercise of police power. And the plaintiff mentions it and characterized it very well.

I thought I had the reference but I don't. The plaintiff tells us in its memorandum, and I'm sure the Court will find it, that what we are doing in effect is paying for the service of removing these things from the roads.

I submit to Your Honors that that is no different than the State of Florida paying for the service of having its high school annuals printed in the state, and I suggest to Your Honors—

(Judge Winter) Except that the high school annuals is a species of personal property which it is going to consume. [66] You could argue from now until doomsday and I do not think you could convince me that this bounty is part of an overall exercise of police power by the State of Maryland for the benefit of the inhabitants of Maryland and the state as a whole.

(Mr. Garrett) I would agree with you that it is in furtherance of the exercise of that police power in the legislative scheme, which is generally a police power scheme, but I suggest to Your Honor that it may even be analogous to welfare, and the Supreme Court has not told us that we cannot discriminate against nonresidents in welfare. They have said you can't impose durational residency requirements, and the Social Security Act may say something about that, but constitutionally Maryland can say, We will not give our money to you if you're not a resident of Maryland.

(Judge Winter) You have been held subject to other provisions of the Constitution. Or let me put it this way. Other provisions of the welfare legislation have been declared invalid.

And if your theory is that this is simply a giveaway, it is a bounty, it is a proprietary function, the Constitution does not apply, these cases stand against you.

(Mr. Garrett) Your Honor, I disagree. I think that Maryland could decide tomorrow that it was going to get into the scrap business or that it was going to get into the [67] car towing business and could use its resources in a proprietary capacity to clean up the highways and byways of abandoned vehicles.

(Judge Miller) That may well be, but it has not done that.

(Mr. Garrett) But clearly that would have a substantial burden upon the plaintiff's interstate commerce, and I don't think this Court or any other Court—

(Judge Winter) Let us argue the case before us and not think up some other ones.

(Mr. Garrett) But I think that illustrates the function we're performing in the bounty piece of this program, Your Honor, and that's why we maintain that it really is a proprietary function when we pay.

(Judge Winter) Simply because it could be recast in another form, Mr. Garrett, does not mean that it possesses that form now.

(Mr. Garrett) That's true, Your Honor.

(Judge Winter) So I think we have to look at it now as part of the overall scheme.

(Mr. Garrett) Now, if I may, I would like to point out a couple of things that are taking place here.

Number one, the Legislature's concern about out-of-state scrappers getting bounty on vehicles abandoned out of Maryland is genuine. The affidavit indicates that the plaintiff claimed bounty by means of 56 indemnity agreements [68] for 56 vehicles over a three-day period, all of which indicated on their face that the origin of the vehicles was the D. C. Police Department.

(Judge Miller) Has the DMV in any written publication stated to the processors, We are not paying bounty on any automobile picked up outside of the State of Maryland?

(Mr. Garrett) No, Your Honor.

(Judge Miller) What difference does it make then? If this is just some policy that is kept locked in the recesses of the mind of the Administrator, I do not see how we can base a decision on that.

(Mr. Garrett) Well, I submit that the Court is testing the statute. I tell the Court today as a matter of record that it is my opinion that the Administration has not complied with the statute in this respect and that its payment of bounty for vehicles it knew were abandoned outside of Maryland was not pursuant to the statutory command.

I have told the Administration that and I believe that the changes will be forthcoming, but I don't know that that changes the statute in any way if it's been

misapplied or misadministered, and I must strongly point out that the Court is looking at the statute.

(Judge Miller) That is what I am looking at, and it seem to me it does not say what you are saying it says.

(Judge Winter) I think we understand your position [69] on that point pretty well, Mr. Garrett.

(Mr. Garrett) Very well.

(Judge Winter) Is there anything further?

(Mr. Garrett) Your Honor, the only further thing I would mention is that it seems to us clearly that in this case, there are some substantial facts in dispute. We really don't know how many cars are crossing that line or how many cars Alexandria in good faith thinks are crossing that line, or how many cars in those statistics that we've demonstrated everybody knows have never crossed that line.

(Judge Winter) You are talking about how many cars are—

(Mr. Garrett) Coming out of Maryland into Virginia, because their complaint really is that we have stopped the flow of vehicles interstate, and I'm not prepared to demonstrate and I wouldn't even assert, but the affidavit indicates that in a three-day period, at least 56 of those vehicles came out of the District of Columbia.

(Judge Miller) At one time they were titled in Maryland though, so at some point or other, they came from Maryland; isn't that correct?

(Mr. Garrett) They did, but I'm suggesting to Your Honor that our statute will in no way affect the flow of vehicles out of the District of Columbia to Virginia, or should not, or if it does, it should be of no effect on the [70] validity of the statute.

(Judge Winter) All right.

(Mr. Garrett) Thank you, Your Honor.

(Judge Winter) Thank you, Mr. Garrett.

Now, Mr. Ramsey, do you have anything further you would like to say?

(Mr. Ramsey) Two minutes, literally, Your Honor.

I would like to address the Court's attention to the specifics of the statute in question, and that is the trouble which has concerned some of the Judges of the Court as respects whether you can go there and physically inspect this vehicle to see whether it's a stolen car.

It's destroyed. Just like in Goldfinger, they take off the VIN plate, they drop it in, they smash it into a two-foot square. The car is gone. There's no way you go over there and inspect.

You don't send the indemnity until you have, quote, destroyed, close quote, and the statute expressly says, The indemnity agreement and the manufacturer's serial or identification number — this is the VIN plate — shall be satisfactory proof that the vehicle has been destroyed. There's nothing to look at.

(Judge Kaufman) The point is, Mr. Ramsey, that if the VIN plate is taken off before the tower brings it to the processing plant and as a matter of practice the vehicle [71] stays around the processing plant for a while before it is destroyed, it is possible that if an inspector came on a spot check now and then, there might be some way of checking where that car came from, if the VIN plate were still on it.

The point is that if the VIN plate is not on it, I do not see what good it does when the inspector comes there and sees a blue car or a red car or a yellow car or a hundred of them.

(Mr. Ramsey) I agree, Judge Kaufman, and that's my second point that I wanted to call the Court's attention to.

In the Vogt case in 267 Maryland, which inspects the entire history of this matter and talks to the structure of the Act, they point out that all Maryland is really interested in is that Ramsey doesn't go across to Alexandria and say, I'm a scrap processor, and what he has is a can opener to work with.

They want to be sure he has a shredder and a baler and then, says the Court of Appeals of Maryland, If you've got one of these balers you paid a million dollars for, you need 500 hulks a day to make it economically feasible, so you're not going to keep hulks around, they're going to be destroyed. That's what the inspections are for.

(Judge Kaufman) How do you inspect to that extent if the plant is out of the state?

(Mr. Ramsey) Well, they've done it, for the [72] Pennsylvania people and for the Virginia people, Do you have a million-dollar baler and shredder or don't you; yes, you do, there it sits.

(Judge Kaufman) How do you know they use it, rather than just throw the stuff—

(Mr. Ramsey) That's a rather expensive hobby, to sit around with a baler and shredder and collect hulks if you're not going to bale and shred the hulks. It's a nice toy to have but it doesn't appeal much unless you're making a movie like Goldfinger.

But basically what the Court of Appeals says is, They're going to look, if you've got one of these things, you're going to be hunting for 500 hulks a day. That's the thrust of what the Court of Appeals says in the Vogt case.

Now, as a practical matter, this is what the Court is interested in, not going over there and looking to check, because you're going to grind them up as fast as you get them, once you have this enormous equipment in place.

But just off the record, and not in this record, we had an inspector from Maryland in Alexandria about a week ago in connection with the problem.

They can and do come down there, but the obvious fact is it is the impact of licensure and the ability to enact the regulation and say, Keep your books in Maryland. Okay, we'll be required to in order to keep our license. If [73] that's what they want, that's what we do.

If on the other hand they say it's no trouble to cross the bridge to Alexandria, that's up to Maryland. They can set their own. If they need their State Police to get them into our plant, if we're that dangerous, then they should revoke our license, we don't belong in business at all.

I would simply say this further to the Court and then I'll subside.

Maryland towers are the ones who execute these indemnity agreements and then the processor signs at the bottom to certify he destroyed, so they're Marylanders. If there's anybody telling untruths, it's the tower who mispresents it to the processor.

(Judge Miller) The tower is not licensed. He can be from out of state, can he not?

(Mr. Ramsey) Of course. He can be from anywhere. But it's not the processor. The processor simply says, I destroyed this vehicle this man delivered to me and indemnified me on.

And basically, again coming back to the point which has been repeatedly made, there wasn't anything that said you couldn't collect on these cars if they were Maryland titled cars.

And that, if the Court please, I think fully presents the material I wanted to argue.

[74] (Judge Winter) Thank you very much, gentlemen. We will take the case under consideration.

The Court will adjourn until further call.

(Thereupon, at 5:10 o'clock p.m., the hearing was concluded.)

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,
Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT OF THREE JUDGES FOR THE DISTRICT OF MARYLAND

MOTION TO AFFIRM

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MOTION TO AFFIRM

Alexandria Scrap Corporation (hereinafter referred to as "Alexandria"), Appellee, moves that the judgment of the District Court be affirmed on the ground that the questions raised by the Appellants are so unsubstantial as not to warrant further argument.

STATEMENT

The Jurisdictional Statement is predicated upon misstatements of the issues presented below. Appellants argue: "Alexandria's complaint is really that its bounty receipts have not increased by as much as it would have liked"[1] and that "[i]f Alexandria believes that price supportive bounty payments are essential to its survival, its proper redress is not to be found with the Court, but rather with the legislature — and the appropriate legislature in this case is that sitting in Richmond, Virginia and not that body which deliberates in Annapolis, Maryland"[2]. Alexandria submits that a clarification of the record is required.

Alexandria is a Virginia-based scrap processor whose primary source of raw materials is automobile hulks, a very substantial portion of which are derived in interstate commerce from Maryland.[3] The scrap metal which is processed by Alexandria is then sold, either directly or through brokers, to primary metal mills, many of which are located in states other than Virginia, the situs of Alexandria's operations.[4] The company's business is, therefore, heavily dependent upon the uninterrupted flow of scrap in interstate commerce.

Put simply, these proceedings were brought by Alexandria, the Plaintiff below and Appellee herein, because of the impact of the amendment of Maryland Annotated Code (1957, 1970 Repl. Vol., 1974 Cum.

[1] Jurisdictional Statement, 19.

[2] Id at 28.

[3] Affidavit of Isadore Gittleson ¶5, which is in the record.

[4] Id at ¶2.

Supp.) art. 66½, Section 11-1002.2(f)(5)[5] by the enactment of Chapter 465, Laws of Maryland, 1974. In its original form, Section 11-1002.2(f)(5) was a part of a general statutory scheme which was enacted for the purpose of restoring the operation of the scrap cycle by expediting the removal and destruction of junked and abandoned vehicles.[6] Prior to the 1974 amendment, there was no distinction in this legislative scheme between scrap processors which were located within the State of Maryland and those outside of its boundaries; the only restriction upon participation in the bounty program by a scrap processor was the requirement that the processor submit to licensing by the Motor Vehicle Administration of the State of Maryland. Non-Maryland scrap processors were eligible to be licensed, however, and, once licensed, there was no distinction between in-state and out-of-state scrap processors in terms of eligibility or procedures for collecting bounty payments.

One of the major obstructions to the proper flow of wrecked or abandoned automobiles was the failure of the possessor of such vehicles to have the proper title documentation. The statutory scheme enacted by the Maryland legislature sought to cure this difficulty by providing that wreckers and scrap processors, including

[5] Hereinafter all references to Maryland Annotated Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) art. 66½ are cited only by section number.

[6] The legislative intent of this statutory scheme, as construed by the Court of Appeals of Maryland, was "to arrest the increasing accumulation of automobile hulks, and to promote their recycling" *Administrator, Motor Vehicles Administration v. Vogt,* 267 Md. 660, 675, 299 A.2d 1, 9 (1973).

Alexandria, could lawfully acquire abandoned vehicles from (1) an owner possessing a valid certificate of title, (2) a police department via a police sale (Section 11-1002.2(a)), (3) anyone in possession of a valid police certificate of authority to sell a vehicle (Section 11-1002.2(f)(1)), (4) formal notification procedures following 30 days possession plus an additional 10 days waiting period (Section 5-203) and (5) virtually anyone without any documentation in the case of a motor vehicle eight (8) years of age or older which has no engine or is otherwise inoperable (Section 11-1002.2(f)(5)).[7] Obviously, the transfer of a motor vehicle documented by a certificate of title is quite simple and quick. Since few abandoned vehicles arrive at a scrap processors' plant with a reliable certificate of title, however, the other methods of transfer are clearly important. The two methods of transfer which are wholly dependent upon local police departments involve procedures which are necessarily very time consuming. Further, the form and notice requirements of Section 5-203 are cumbersome and are available only to licensed *wreckers* as distinguished from unlicensed vehicle *towers,* which constitute a major source of supply to processors such as Alexandria.

As a practical matter, Alexandria and all other licensed scrap processors utilized the last method, prescribed by Section 11.1002.2(f)(5), virtually to the exclusion of the other methods. This is because the class of vehicles defined by two provisions — vehicles which are eight (8) years of age or older which have no engine or are otherwise inoperable and for which there

[7] These procedures are discussed in detail in the Opinion of the District Court A.8a-13a.

are no certificates of title — account for most of the volume of vehicles acquired by scrap processors. As a matter of practice, scrap processors, including Alexandria, have required persons delivering vehicles pursuant to this procedure to execute a form of indemnity agreement by which the transferror certified that he had legal ownership of and authority to deliver the vehicle, agreed to indemnify the scrap processor from all liability for claims arising from the destruction of the vehicle, and warranted compliance with all Maryland laws and regulations.

Chapter 465 of the Laws of Maryland, 1974, amended Section 11-1002.2(f)(5) so as to give formal legal effect to the use of indemnity agreements by scrap processors and, further, to limit the use of the Section 11.1002.2(f)(5) procedure to those scrap processors whose plants were physically located and operating in the State of Maryland.[8] The use of the indemnity

[8] The operative portion of Chapter 465 amended Section 11-1002.2 (f)(5) as follows:

> "Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is [[other]] OTHERWISE totally inoperable. IN THOSE CASES ONLY, A SCRAP PROCESSOR WHOSE PLANT IS PHYSICALLY LOCATED AND OPERATING IN THIS STATE SHALL [[MAY]] EXECUTE AN INDEMNITY AGREEMENT THAT SHALL BE FILED WITH THE MOTOR VEHICLE ADMINISTRATION. THE INDEMNITY AGREEMENT SHALL CONTAIN THE NAME, ADDRESS AND SIGNATURE

agreement to collect bounties for the destruction of insufficiently documented motor vehicles which were over eight years old and which had no engine or were otherwise totally inoperable was, by far, the simplest procedure for a wrecker or tower to transfer such a vehicle to a scrap processor and for the scrap processor, in turn, to claim the statutory bounty for the destruction of the vehicle. Thus the amendment effectively limited the ability of Alexandria and other out-of-state scrap processors to acquire bounty-eligible vehicles at a bounty-enhanced price to those few situations where the transferror had sufficient title documentation, was willing to undertake cumbersome and time consuming police procedures or, in the case of licensed wreckers only, was willing to go through the notice procedure to acquire title.

In their Jurisdictional Statement, the Appellants make clear that the Appellee had been affected by the application of Chapter 465 of the Laws of Maryland, 1974, in that the bounty payments received by Alexandria for the destruction of abandoned and wrecked

> OF THE PERSON DELIVERING THE VEHICLE. THE INDEMNITY AGREEMENT AND THE MANUFACTURERS SERIAL OR IDENTIFICATION NUMBER SHALL BE SATISFACTORY PROOF THAT THE VEHICLE HAS BEEN DESTROYED AND SHALL BE ACCEPTABLE FOR PAYMENT OF THE FULL BOUNTY AUTHORIZED BY SECTION 5-205 IF THE VEHICLE IDENTIFIED IN THE INDEMNITY AGREEMENT WAS TITLED IN THIS STATE. OTHERWISE FOR THE PURPOSE OF ADMINISTERING THE PROVISIONS OF THIS SECTION, THE PROVISIONS OF SECTION 5-203 SHALL NOT APPLY".

The official explanation of type style from the Laws of Maryland, 1974, provides:

> "CAPTIALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Underlining indicates amendments to the bill. [[Double brackets]] enclose matter stricken out of bill."

motor vehicles accompanied by indemnity agreements have been greatly reduced since the effective date of the amendments. While this effect of Chapter 465 is most evident on the surface, the other effects of the amandatory legislation run considerably deeper. Put simply, Chapter 465 sets up a scheme of economic discrimination whereby a scrap processor, whose plant is physically located and operating in Maryland, can pay more than a non-Maryland scrap processor for the hulk of a motor vehicle which is greater than eight years old, has no engine or is otherwise totally inoperable and was once titled in the State of Maryland. This difference in worth is solely the result of the artificially enhanced value placed upon such hulks by the Maryland bounty program. Not only does the licensed wrecker receive a statutory share of the bounty from the Maryland scrap processor, but the scrap processor can sweeten the price paid to wreckers and non-licensed towers by paying them a part of the processors share of the bounty for eligible vehicles.[9]

So long as there was no discrimination in the operation of the program between Maryland scrap processors and non-Maryland scrap processors, the existence of the bounty was, in fact, a major device to accomplish the primary purpose of the program (to speed the scrap cycle), a boon to the entire scrap processing industry as well as to wreckers and towers. Common business sense dictates, however, that a wrecker or tower will attempt to dispose of a bounty-

[9] Section 5-205 guarantees that a wrecker is absolutely entitled to $8.00 of the bounty. However, Chapter 465 renders Section 5-205 inapplicable to 8-year old hulks delivered to out-of-state scrap processors without any title documentation except an indemnity agreement. Since in-state processors will have the use of the indemnity agreement procedure but out-of-state processors will not, it is obvious that the wrecker is deterred from moving the hulks in interstate commerce because he thus forfeits his $8.00 share of the bounty.

eligible hulk by the simplest available procedure. Thus, a wrecker or tower will never exercise the more cumbersome and lengthy technique of applying for police certificates pursuant to Section 11-1002.2(f)(1)-(4) or wrecker's certificates pursuant to Section 5-203 where an indemnity agreement can be used.[10] As a result in those cases where no title documentation is available, wreckers and towers will logically deal with Maryland scrap processors who will accept indemnity agreements pursuant to Section 11-1002.2(f)(5) and will pay bounty-enhanced prices for hulks eligible therefor. Conversely, the Appellee, as a scrap processor with a plant located outside of the State of Maryland, not being allowed to use the indemnity agreement technique to obtain the Section 5-205 bounty, cannot compete with the Maryland scrap processors because of the inability to pay to wreckers and towers a bounty-enhanced price for such hulks.[11] Thus, the supply of hulks in interstate

[10] The police certificate method of transferring title of an eight year old or older, totally inoperable vehicle to a scrap processor was seldom used and never really considered as an alternative to the indemnity agreement prior to July 1, 1974, when the provisions of Section 11-1002.2(f)(5) were uniformly available to customers of *all* scrap processors, irrespective of location. Stipulation ¶16, which is in the record.

[11] During the three months immediately prior to July 1, 1974 (April, May and June, 1974), the effective date of the amendment, Plaintiff acquired a total of *1,879* vehicles from an aggregate of eight unlicensed Maryland vehicles towers who were paid a bounty-enhanced price for the hulks. The Motor Vehicle Administration paid Plaintiff $30,064.00 in bounties for the destruction of those vehicles most of which was rebated to the towers who submitted the vehicles. During the next three months (July, August and September, 1974), the Plaintiff acquired a total of *27* vehicles from those same eight towers and collected a bounty of $432.00, most of which was rebated to the towers who submitted the vehicles.

Futher, a single tower in that group who delivered *691* of the bounty-eligible vehicles in interstate commerce from

commerce will dry up inasmuch as such commerce is diverted to in-state processors able to pay top dollar and to consummate the transaction expeditiously.

As a practical matter, of course, while the bounty payments provide an incentive to the scrap processor, their primary value is to allow the scrap processor to pay more for the bounty-eligible vehicles which it receives from both licensed wreckers and unlicensed towers.[12] If an out-of-state scrap processor, such as Alexandria, cannot claim a bounty on otherwise eligible vehicles because they are documented only through indemnity agreements, then the wreckers or towers will prefer, as a matter of basic business judgment, to deliver the hulk to a Maryland located scrap processor who will be able to pay the full bounty-enhanced price. Thus the wreckers and towers who are discouraged from delivering to out-of-state processors are also affected by the burden on interstate commerce imposed by Chapter 465.

The situation becomes clearly intolerable when the necessity for supplying the very expensive scrap processing machinery is considered.[13] A principal difficulty faced by any scrap processor is the maintaining of a steady stream of automobile hulks to feed the

Maryland during the two month period prior to the effective date of the amendment, has delivered *none* to the Plaintiff since that date. This tower has instead dealt on an intrastate basis with Joseph Smith & Sons, Inc., a Maryland-based competitor for automobile hulks in the Prince George's-Montgomery County area. Affidavit of Isadore Gittleson ¶13-14.

[12] See, Stipulation ¶10 and Affidavit of Isadore Gittleson ¶10.

[13] The equipment, which is required by both industrial necessity and statutory regulation, must be permanently installed and often costs in excess of one million dollars. See, Stipulation ¶10.

voracious appetite of the processing equipment, and it is only from this steady stream of hulks that the scrap processor can maintain his profitability. Thus, the effect of the Maryland bounty scheme is to alter the normal flow of bounty-eligible vehicles so as to ensure that those hulks documented by indemnity agreements only will be destroyed by scrap processors with Maryland locations. In this situation, the scrap processor relies upon the steady flow of hulks, rather than the bounty, and the discriminatory interference with interstate commerce in such hulks is manifest.

In their Jurisdictional Statement, the Appellants have unfortunately attempted to augment and overstate their case through several arguments which are completely irrelevant to the merits of these proceedings. For instance, Appellants have described several situations where the State of Maryland has no regulatory control over the operations of our-of-state wreckers. The distinctions and differences between wreckers and scrap processors have been quite adequately discussed and highlighted by the Maryland Court of Appeals in *Administrator, Motor Vehicle Administration v. Vogt, supra,* where the difference in operation and business philosophy of two related but very different businesses are made manifestly clear. While the Jurisdictional Statement does refer to the inability of the State of Maryland to regulate the activities of out-of-state *wreckers,* there is no foundation whatsoever laid to support any such intimation as respects the inability of Maryland to properly regulate Alexandria or any other out-of-state *scrap processor.*

Appellants also suggest that the Virginia legislature is the proper source of relief for Alexandria. This allegation is nonsensical. The State of Virginia has no reason to pay a bounty for the destruction of motor

vehicles previously titled in the State of Maryland. Indeed, if Virginia were to enact legislation equivalent to Maryland's bounty program, the bounty for destroying motor vehicle hulks would be limited to those motor vehicles which were once titled in the State of Virginia, and Alexandria would still be precluded from its source of supply of vehicles formerly titled in Maryland.

The Appellants further take the position that the provisions of Chapter 465 of the Laws of Maryland, 1974, were enacted to allow the State of Maryland to control its limited financial resources. Alexandria submits that, if conservation of money is the objective, the proper mechanism would be to lessen the amount of the bounty paid to *all* scrap processors for the destruction of bounty-eligible vehicles or, as suggested by the lower court, to limit bounty payments to vehicles abandoned within the State of Maryland. Opinion of the District Court, A 30a-31a. These alternatives would enable both Maryland scrap processors and those located elsewhere to compete on equal footing for the bounty-eligible vehicles and will ensure the continued flow of interstate movement of bounty-eligible vehicles without discriminatory impediment.

ARGUMENT

Alexandria submits that the three judge District Court fairly and faithfully applied the Constitutional principles established by the numerous precedents of this Court. The District Court's opinion reveals that the questions sought to be raised by the Appellants in the Jurisdictional Statement are unsubstantial. The District Court was correct in its assessment based upon its careful scrutiny of the record and briefs that there was no material fact in dispute. Appellants' attempt to interject irrelevancies into these proceedings cannot

justify the basic unconstitutionality of that portion of Chapter 465 of the Laws of Maryland, 1974, which limits the application of important aspects of the bounty program to scrap processors whose plants are physically located and operating in the State of Maryland.

CONCLUSION

The opinion of the District Court demonstrates that the 1974 amendment to Section 11-1002.2(f)(5) is devoid of any rational connection with the legislative purpose underlying the original enactment and that the Section, as presently enacted, is invalid in that it denies equal protection of the laws and constitutes an undue burden on interstate commerce. Alexandria submits that the issues raised by the Appellants in their Jurisdictional Statement are frivolous and so unsubstantial as to merit no further consideration. This Court should therefore affirm the decision of the District Court without the necessity for further argument.

Respectfully submitted,

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION,
STATE OF MARYLAND, ET AL.,

Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRIEF FOR APPELLANTS

OPINION BELOW

The opinion of the United States District Court for the District of Maryland, from which the Appellants are seeking relief, is reprinted in the Appendix to the Appellants' Jurisdictional Statement (AJS. la),[1] and

[1] References to the Appendix to the Jurisdictional Statement will be cited as "AJS.," and references to the Appendix to this Brief for Appellants as "A." The pagination in the Appendix to the Jurisdictional Statement is in the form "1a, 2a, 3a, . . .," while that of the Single Appendix is "1A, 2A, 3A, ..."

has been reported as *Alexandria Scrap Corp. v. Hughes*, 391 F. Supp. 46 (D. Md. 1975).

JURISDICTION

The jurisdiction to entertain this appeal from a decision of a United States District Court sitting as a court of three judges, is premised upon 28 U.S.C. § 1253. Probable jurisdiction was noted by this Court on October 6, 1975.

TEXT OF CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. I, § 8:

> The Congress shall have Power . . .
>
> . . . .
>
> To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes [.]

U.S. Const. amend. XIV, § 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Maryland Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, § 11-1002.2(f)(5), the statute which the District Court determined was unconstitutional, may be found in the 1975 Cumulative Supplement to Volume 6 of the Annotated Code of Maryland. (The identical statute may also be found in the 1974 Cumulative Supplement to Volume 6.) It reads as follows:

> (5) Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is otherwise totally inoperable. In those cases only a scrap processor whose plant is physically located and operating in this State shall execute an indemnity agreement that shall be filed with the Motor Vehicle Administration. The indemnity agreement shall contain the name, address and signature of the person delivering the vehicle. The indemnity agreement and the manufacturers serial or identification number shall be satisfactory proof that the vehicle has been destroyed and shall be acceptable for payment of the full bounty authorized by § 5-205 if the vehicle identified in the indemnity agreement was titled in this State. Otherwise, for the purpose of administering the provisions of this section, the provisions of § 5-205 shall not apply.

QUESTIONS PRESENTED

I. Does either the Commerce Clause or the Equal Protection Clause of the Constitution of the United States compel the State of Maryland to make, out of State funds, bounty payments to non-Maryland scrap

processors in the same manner or to the same extent as such payments are made to Maryland scrap processors?

II. Were the Appellants denied due process of law where material facts were in dispute, and the District Court granted summary judgment in favor of Appellee?

STATEMENT OF THE CASE

Plaintiff-Appellee Alexandria Scrap Corporation (Alexandria), a Virginia corporation, instituted this proceeding in the United States District Court for the District of Maryland seeking injunctive and declaratory relief pursuant to 28 U.S.C. §§ 2281, 2284, 2201, 2202. Named as Defendants, now Appellants, were Harry R. Hughes, Secretary of Transportation, and other officials of the Motor Vehicle Administration of the Maryland Department of Transportation who are charged with administering the statute complained of. Because Alexandria alleged the unconstitutionality of a Maryland statute, a three-judge court was convened to hear the case pursuant to 28 U.S.C. §§ 2281, 2284.

The material facts surrounding this case are relatively simple. In 1969 the Maryland Legislature enacted a bill to provide, *inter alia*, "for the disposal of abandoned motor vehicles, the licensing of wreckers and scrap processors of motor vehicles, [and] the procedure for notifying the Department of Motor Vehicles of the scrapping, dismantling or destroying of motor vehicles," Laws of Maryland 1969, ch. 556. Although the statutory scheme has been altered since 1969, it has remained essentially the same from 1969 until the present. "[T]he legislation was designed to arrest the increasing accumulation of automobile hulks, and to promote their recycling," *Administrator v. Vogt*, 267 Md. 660, 675, 299 A.2d 1, 9 (1973).

The legislative scheme provides for the licensing[2] of scrap processors[3] and automobile wreckers,[4] the payment by wreckers — but not scrap processors — of a semi-annual assessment for retaining possession of automobile hulks ten model years or older which have been in their possession for more than one year,[5] and the payment by the State of Maryland to wreckers and scrap processors of a bounty for the destruction of certain vehicles formerly titled in Maryland.[6]

From the enactment of the original legislation until July 1, 1974, there were basically four methods by which licensed wreckers and scrap processors could lawfully obtain vehicles which, upon their destruction, would entitle the wreckers and scrap processors to

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[2] Maryland Code (1957, 1970 Repl. Vol.) Art. 66½, §5-201.

[3] "'*Scrap processor*' means an establishment having facilities for processing iron, steel and nonferrous scrap metal and whose principal product is scrap iron, steel and nonferrous scrap for sale for resmelting purposes only which is licensed under the provisions of this part." Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66½, §5-201.1(a).

[4] "'*Wrecker*' means every person, firm, or corporation engaged in the business of purchasing or otherwise acquiring vehicles for the benefit of the materials contained therein or parts thereof." Code (1957, 1970 Repl. Vol.) Art. 66½, §5-201.1(b).

[5] Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66½, §5-203(d). The age of vehicles which are subject to assessment has changed over the years. *See* note 21 *infra*.

[6] Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66½, §5-205. In very limited circumstances Maryland will pay a bounty for the destruction of automobiles which have never been titled in the State. These instances arise where a police department disposes of a vehicle which was abandoned within a political subdivision. In these cases the State will pay a bounty to the appropriate county or Baltimore City. Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66½, §§5-205, 11-1002.2.

bounty payments from the State of Maryland. Such vehicles could be received from: 1. A vehicle owner possessing a valid certificate of title;[7] 2. A Maryland police department, after the public auction of the vehicle;[8] 3. Anyone in possession of a valid police certificate of authority to sell the vehicle;[9] and 4. Virtually anyone, without any documentation, in the case of a vehicle eight years of age or older which had no engine or was otherwise totally inoperable.[10]

Since 1970 the Appellee, although a Virginia corporation with its principal place of business in Alexandria, Virginia, has been licensed as a scrap processor by the State of Maryland, and has participated in Maryland's bounty program. In fact, from July 1, 1970, through September 30, 1974, Alexandria received $219,084.00 in bounty payments from the State of Maryland, which represented 13.7% of the total sum of bounty payments received by all wreckers and scrappers during that period. *See* Stipulation of Facts ¶ 13 (A. 60A).

During its 1974 session the Maryland Legislature amended the existing bounty scheme. As a result of the

[7] Code (1957, 1970 Repl. Vol.) Art. 66½, §5-203.1. This section governs the conveyance of title to a wrecker or scrap processor. This can be accomplished either by a vehicle owner delivering the certificate of title to the wrecker or scrapper, or by anyone holding an assigned certificate of title who endorses a reassignment and warranty of that title when transferring the vehicle in question to a wrecker or scrap processor. The latter method is usually employed by wreckers when delivering hulks to scrappers, and the document executed by the wrecker is commonly referred to as a Wrecker's Certificate, which is a form issued by the Maryland Motor Vehicle Administration.

[8] Code (1957, 1970 Repl. Vol.) Art. 66½, §11-1002.2(a).

[9] Code (1957, 1970 Repl. Vol.) Art. 66½, §11-1002.2(f)(1-4).

[10] Code (1957, 1970 Repl. Vol.) Art. 66½, §11-1002.2(f)(5).

passage of House Bill 782, Laws of Maryland 1974, ch. 465,[11] as of July 1, 1974, those scrap processors with a plant "physically located and operating in" Maryland were eligible to receive bounty payments for vehicles eight years of age and older which had no engine or were otherwise totally inoperable, if their acquisition was documented by an indemnity agreement, and the agreement was filed with the Motor Vehicle Administration as a prerequisite to payment.[12] Non-Maryland scrap processors, including Alexandria, were not eligible to receive bounty payments for these vehicles through the execution of an indemnity agreement. These non-Maryland scrappers could receive bounty payments for such eight year old vehicles if they received the vehicles by one of the other three methods, but they could not do so by filing indemnity agreements.

Because the acquisition of these eight year old vehicles had been the easiest and most lucrative method by which Alexandria had participated in the bounty program, Alexandria asserted that the 1974 legislation caused is primary source of bounty revenue to evaporate.[13] Alexandria averred that during the three

[11] Now codified as Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66½, §11-1002.2(f)(5).

[12] By the execution of an indemnity agreement, the person delivering the eight year old vehicle indemnified the scrap processor to whom the vehicle was delivered from all claims which might be brought against the scrapper upon the destruction of the vehicle. Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66½, §11-1002.2(f)(5).

[13] It must be noted that eight year old vehicles which were delivered by wreckers did not have to be accompained by indemnity agreements in order to qualify for bounty payment. The Pennsylvania scrap processors participating in the Maryland program used Wreckers' Certificates instead of indemnity agreements. *See* note 7 *supra*. The use of these Wreckers' Certificates is in no way restricted to use by Maryland based scrap processors.

months prior to July 1, 1974 (April, May, and June, 1974), it had acquired 1,879 vehicles for the destruction of which it had received $30,064.00 in bounty payments. For the next three months (July, August, and September, 1974) after the amending legislation became effective, Alexandria acquired only 27 vehicles which resulted in the collection of $432.00. Affidavit of Isadore Gittleson ¶13 (A. 81A).

Believing that the amended bounty scheme imposed a burden upon its ability to collect bounties, Alexandria instituted suit in the United States District Court for the District of Maryland praying that a declaratory judgment be entered decreeing Code (1957, 1970 Repl. Vol., 1974 Cum. Supp.) Art. 66½, § 11-1002.2(f)(5), unconstitutional as being repugnant to the Commerce Clause and to the Equal Protection Clause of the fourteenth amendment to the United States Constitution, and further praying that Appellants be enjoined from enforcing or administering said statute. Alexandria had also requested that a three-judge court be convened to decide the case, and such a tribunal was designated by The Honorable Clement F. Haynsworth, Chief Judge, Fourth Judicial Circuit. After receipt of Alexandria's Complaint, Appellants filed a Motion to Dismiss.

The cause was heard on February 14, 1975, and on March 12, 1975, the Court handed down its opinion and order. The District Court granted summary judgment for Alexandria, found the Maryland statute to be violative of the Commerce Clause and the Equal Protection Clause of the Constitution of the United States, and enjoined Appellants from giving any force or effect to the words "whose plant is physically located and operating in this State," as they appeared in the statute. This ruling has the effect of allowing non-

Maryland scrap processors to obtain bounty payments for inoperable eight year old vehicles by filing indemnity agreements.

Appellants filed their Notice of Appeal of the District Court's decision on April 25, 1975 (AJS. 32a). The Jurisdictional Statement was filed on June 20, 1975, and Alexandria filed its Motion to Affirm after having secured from the Clerk a time extension until August 6, 1975, to do so. This Court then noted probable jurisdiction on October 6, 1975.

SUMMARY OF ARGUMENT

The District Court erroneously concluded that Maryland's bounty scheme violated both the Commerce Clause and the Equal Protection Clause. Additionally, the grant of summary judgment in favor of Alexandria was procedurally and substantively improper.

Commerce Clause

Far from burdening commerce to an unconstitutional extent, the Maryland statute under review does not place any burden upon interstate commerce. Unlike the situations which existed in the cases cited by the District Court, the Maryland law does *not* prohibit, or even restrict, the interstate movement of scrapped automobiles or scrap metal. The program allows Alexandria, or any licensed non-Maryland scrap processor, unlimited participation in the bounty program. In fact, the scheme actually promotes commerce by artifically enhancing the value of abandoned vehicle hulks in excess of their natural market price. For these reasons, as a matter of law, the Maryland scheme does not offend the Commerce Clause.

Equal Protection Clause

The District Court's ruling that the Maryland statute unconstitutionally denied Alexandria the equal protec-

tion of the laws is erroneous as a matter of law, because the Equal Protection Clause of the fourteenth amendment is inapplicable to the instant case. That Clause provides, in part, that no State shall "deny to any person *within its jurisdiction* the equal protection of the laws," U.S. Const. amend. XIV, § 1 (emphasis supplied). Alexandria is a Virginia corporation, with its principal place of business in Virginia, which is not registered to do business in Maryland, which in fact does not engage in any business in Maryland, and which does not pay any Maryland taxes. Being a Virginian not within Maryland, Alexandria is not entitled to the equal protection of Maryland's bounty law. *See Sully v. American Nat'l Bank*, 178 U.S. 289, 20 S. Ct. 935 (1900); *Blake v. McClung*, 172 U.S. 239, 19 S. Ct. 165 (1898); *see also Missouri v. Canada*, 305 U.S. 337, 49 S. Ct. 232 (1938); *cf. Pennoyer v. Neff*, 95 U.S. 714 (1877).

Even if the Equal Protection Clause were applicable to this case, the Maryland statutory scheme would not abridge it. The manner by which the Maryland law differentiates between Maryland and non-Maryland scrap processors is "rationally based and free from invidious discrimination," *Dandridge v. Williams*, 397 U.S. 471, 487, 90 S. Ct. 1153, 1162 (1970). In 1969 the Maryland Legislature perceived that a problem of statewide proportion was presented by the accumulation of vehicle hulks in auto wreckers' yards. One aspect of the problem involved environmental health, because some hulks had remained undisturbed for so long that they had become infested with rodents, *Administrator v. Vogt*, 267 Md. 660, 670, 299 A.2d 1, 6 (1973); *Alexandria Scrap Corp. v. Hughes*, 391 F. Supp. 46, 48-49 (D. Md. 1975) (AJS. 3a). In response thereto a comprehensive regulatory program was enacted, one aspect of which was the payment of bounties to encourage the removal of these discarded vehicles. The Legislature was "not subject to a constitutional straightjacket," *Jefferson v.*

Hackney, 406 U.S. 535, 546, 92 S. Ct. 1724, 1731 (1972), in its efforts to remedy the problem, and the resulting bounty program represents a legitimate, constitutional attempt by the State of Maryland to address a difficult situation by directing its finite resources in a manner by which she believes the maximum benefit will be derived, *Geduldig v. Aiello*, 417 U.S. 484, 496, 94 S. Ct. 2485, 2491 (1974); *Dandridge v. Williams, supra*, 397 U.S. at 479, 90 S. Ct. at 1159.

Because Alexandria does not have a constitutional right to receive price-supportive bounty payments from the State of Maryland under *any* circumstances, any limitation upon its ability to secure them cannot be deemed a deprivation of a fundamental right, much less an "invidious discrimination." Impermissible discriminations include impediments to the right to travel, the right to vote, the right of access to the courts, and rights of privacy, *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536 (1974). Improper classifications are those based on alienage, nationality, and race, *Graham v. Richardson*, 403 U.S. 365, 91 S. Ct. 1848 (1971). None of these basic rights or classifications are present in this case.

Impropriety of Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment shall be rendered if all of the pleadings and affidavits "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In this case Appellants' affiant flatly contradicted a material statement made by Alexandria's affiant, creating a *prima facie* dispute as to a material fact. By granting summary judgment in the face of such a dispute, and where Alexandria was not entitled

to a judgment as a matter of law, the District Court committed error. Because neither requirement of Rule 56 was fulfilled, the award of summary judgment was entirely improper, and denied the Appellants due process of law.

ARGUMENT

I.

NEITHER THE COMMERCE CLAUSE NOR THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION OF THE UNITED STATES COMPEL THE STATE OF MARYLAND TO MAKE, OUT OF STATE FUNDS, BOUNTY PAYMENTS TO NON-MARYLAND SCRAP PROCESSORS IN THE SAME MANNER OR TO THE SAME EXTENT AS SUCH PAYMENTS ARE MADE TO MARYLAND SCRAP PROCESSORS.

During its 1967 session the Maryland Legislature requested the Committee on Taxation and Fiscal Matters of the Maryland Legislative Council to review the growing problem presented by the accumulation of abandoned and discarded motor vehicles, and to propose legislation to effect a solution to this problem.[14] The Committee reported that "'[r]estoring the scrap cycle seems to be the only logical means to rid the countryside of worn-out, rusting automobile hulks,'" and that "the core of the problem was to find ways to speed up the so-called 'scrap cycle.'"[15]

> From the evidence presented to the Committee, the objective would seem to be to accelerate the movement of the vehicle from the owner who has decided to discard it, to the auto wrecker who salvages parts and markets the hulk, to the scrap processor who reduces it to scrap marketable at the

[14] The Legislature's request was made in the form of Senate Joint Resolution 57, Laws of Maryland 1967.

[15] Maryland Legislative Council Committee on Taxation and Fiscal Matters 1967 Report 60 (A. 40A).

> mills, and finally to the steel mills which convert it into new usable steel.[16]

The Committee went on to say that the optimal movement of discarded vehicles most often bogs down at the wrecker's automobile junkyard. This bottleneck develops because the most profitable part of a wrecker's operation is the sale of usable parts. Because a wrecker's profit margin in the sale of hulks to a scrap processor is so small, any obstruction tends to retard the movement of these vehicles.[17] Some of these obstructions to the free flow of automobile hulks resulted from technological advances in the steel industry which had reduced the market for the kind of scrap that comes from discarded motor vehicles, and the fact that motor vehicle titling laws, and other legal technicalities, frequently cause wreckers to hesitate handling abandoned vehicles.[18]

The Committee recognized that it actually had to address two problems: 1. abandoned motor vehicles, and 2. the accumulation of motor vehicles in junkyards. Owners of worn-out vehicles often abandoned them because it was cheaper and easier than delivering them to an auto wrecker. Wreckers tended to accumulate large numbers of abandoned vehicles in unsightly junkyards because it was a simple means of maintaining inventories of profitable parts, and because there was little, if any, financial inducement to remove the vehicles to a scrap processor.[19]

Remedial legislation was proposed as a means of tackling the problem. The Committee concluded that

[16] *Id.* (A. 40A-41A).

[17] *Id.* (A. 41A).

[18] *Id.* at 60-61 (A. 41A-42A).

[19] *Id.* at 61 (A. 42A).

auto wreckers play a vital role in the disposal of discarded motor vehicles, and that they should be encouraged to handle as many of these vehicles as possible. However, it was felt that wreckers must also be persuaded to move these vehicles into the scrap cycle as soon as practicable after salvaging usable parts.[20]

During its 1969 session the Maryland Legislature endeavored to act upon the Committee's recommendations, and addressed the problem of the proliferation of automobile junkyards by enacting Senate Bill 30, Laws of Maryland 1969, ch. 556. The resulting legislative scheme has been described in the Statement of the Case *supra*.

The rationale underlying the scheme is relatively straightforward. In order to arrest the accumulation of abandoned autos in wreckers' junkyards, wreckers are required to be licensed and are assessed $5.00 every six months for each vehicle beyond a certain age which they retain for over one year.[21] No penalty is assessed for 18 months after acquisition of a vehicle — one year plus the first six month period — in order to give the wreckers a reasonable amount of time to remove spare parts from the vehicles.[22] Wreckers are motivated to deliver abandoned vehicles to scrap processors for

[20] *Id.* at 62 (A. 43A).

[21] At the time of its original enactment the statute provided for the assessment of such vehicles seven model years or older, Code (1957, 1970 Repl. Vol.) Art. 66½, §5-203(d). In 1972 the statute was amended to impose assessments on vehicles ten model years or older, Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66½, §5-203(d). Penalties are assessed only with respect to older vehicles because such vehicles have minimal value as sources of replacement parts.

[22] The accumulation of discarded vehicles was further discouraged by making it a misdemeanor for a wrecker to store more than 250 vehicles per acre. Code (1957, 1970 Repl. Vol.) Art. 66½, §§5-208, 5-210.

destruction through the implementation of a bounty program. Under this program the State of Maryland pays a bounty of $16.00 for the destruction of an abandoned vehicle by a scrap processor: $8.00 of this fee is paid to the scrap processor, and the other $8.00 is paid to the wrecker who delivered the vehicle to the scrapper.[23] In effect, the Maryland bounty program creates an artifical value for automobile hulks which encourages their expeditious delivery to scrap processors. "The purpose of the law . . . was to halt the growth of [the problems developing from the storage of old automobiles] and to induce recycling of vehicles which had fallen into disuse," *Administrator v. Vogt,* 267 Md. 660, 670, 299 A.2d 1, 6 (1973).

Alexandria, although a Virginia corporation, has participated in Maryland's bounty program as a licensed scrap processor since 1970. When the Maryland Legislature amended the law in 1974, only scrap processors with plants physically located and operating in Maryland were permitted to obtain inoperable eight year old vehicles, upon which bounties would be paid, if an indemnity agreement was executed in favor of the scrapper.[24] The presentation of this agreement, along with the Vehicle Identification Number, to the Motor Vehicle Administration, constitute proof that the vehicle has been destroyed, and the bounty payment is made.

[23] Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66½, §5-205. At the inception of the program the bounty payment was in the sum of $10.00, divided evenly between wrecker and scrapper, Code (1957, 1970 Repl. Vol.) Art. 66½, §5-205. In 1972 the bounty was raised to $12.00, and in 1973 it was increased to the current $16.00 figure.

[24] Of course, non-Maryland scrappers may still receive bounties for these vehicles as long as they are documented in some permissible fashion other than by indemnity agreement.

A. *Commerce Clause*[25]

Article I, section 8, clause 3 of the Constitution, commonly known as the Commerce Clause, provides that the Congress shall have the power to regulate commerce among the several States. Generally speaking, this provision has been interpreted as prohibiting the States from placing non-incidental burdens upon interstate commerce. Under the Maryland bounty program, non-Maryland scrappers, including Alexandria, may not obtain bounties by the execution of indemnity agreements, although all other methods are available to them. In the District Court Alexandria successfully contended that this difference in the means by which scrappers may obtain vehicles eligible for bounty payments violated the Constitution of the United States.

Alexandria's complaint boils down to this. Prior to the enactment of the Maryland bounty scheme, all scrap processors were experiencing financial difficulties because of the depressed state of the scrap industry. After the implementation of the 1969 legislation, all licensed scrap processors, those within Maryland and those located near the Maryland border in contiguous States, realized a most welcome increase in revenues. When the 1974 amendment altered the scheme, in a way which, Alexandria contends, caused it to suffer a loss in receipts, Alexandria felt aggrieved.

In essence, assuming *arguendo* that Alexandria's contention concerning the effect of the 1974 amendment is accurate, until mid-1974, Alexandria had been riding

[25] Because the issues presented by this appeal are closely related and often intertwined, some of the discussion contained in the treatment of the Commerce Clause aspect of the case bears upon the Equal Protection Clause analysis, as does a measure of the material presented under Question II. *infra*.

the Maryland gravy train. Maryland is the only State in the United States which has such a bounty program, or any similar arrangement. Neither Alexandria, nor any of the other licensed non-Maryland scrap processors, pay any Maryland taxes. Neither is Alexandria registered to do business in Maryland with the Maryland Department of Assessments and Taxation, and, in fact, does not engage in any business within the State of Maryland. *See* Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss 79 (R. 197). Despite this, from the inception of the program through mid-1974, the State of Maryland was willing to liberally extend the benefits of the bounty program to non-Marylanders, presumably because the goals of the program could be best achieved if a maximum number of business enterprises participated. In 1974 the Legislature restricted the means by which non-Marylanders could take advantage of Maryland's generosity. Certainly it cannot be said that any scrap processor in the United States has a constitutional right to receive price-supportive bounty payments for scrapped motor vehicles. The validity of Alexandria's argument hinges upon implicit acknowledgement of the existence of a constituional right to these payments on Alexandria's part. Whatever Alexandria receives through Maryland's munificence cannot be regarded as anything but a fortuitous occurrence from Alexandria's viewpoint. Merely because Alexandria finds itself in a less advantageous position after a change in the law has been effected does not mean that the Constitution has been breached.

Surely such a state of affairs cannot be said to offend the Commerce Clause, for whether any State law violates that Clause depends upon whether the statute in question places an undue burden on interstate

commerce: not whether an individual business enterprise earns less income than it did before the enactment of a law. The bounty program actually *promotes* interstate commerce, and places absolutely no burden upon it.[26]

The District Court's analyses of the Commerce Clause, and the cases decided thereunder by this Court, are simply upsidedown. State statutes which have been held unconstitutional as violative of the Commerce Clause have all had one feature in common: they have *prohibited* some form or facet of interstate commerce, either by precluding such commerce outright, or by placing such a heavy burden upon some aspect of commerce that, in effect, it could not be conducted.

In *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S. Ct. 844 (1970), an order issued by an Arizona official which *prohibited* a California concern from transporting uncrated cantaloupes from Arizona to California was found to place an unlawful burden on interstate commerce. The Maryland bounty program imposes absolutely no prohibitions upon the interstate transportation of automobile hulks.

Polar Ice Cream & Creamery Co. v. Andrews, 375 U.S. 361, 84 S. Ct. 378 (1964), presented a situation where this Court considered a Florida law which *prohibited* Florida milk distributors from purchasing milk from non-Florida milk producers. This "*exclusion* of foreign milk from a major portion of the Florida market," was held to violate the Commerce Clause, *id.* at 377, 84 S. Ct. at 387 (emphasis supplied). The Maryland bounty statute neither prohibits nor excludes the importation or exportation of automobile hulks into or out of the State of Maryland.

[26] *See* pages 37-38 *infra*.

In *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 71 S. Ct. 295 (1951), a city ordinance *prohibiting* the sale of pasteurized milk not processed and bottled within a five mile radius of the city was declared unconstitutional by this Court because the ordinance *excluded* milk which was produced in Illinois from distribution in Madison, Wisconsin. The Maryland law under review does not prohibit or impede the interstate movement of any commodity.

In *H.P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 69 S. Ct. 657 (1949), a New York law which *forbade* a milk dealer to buy from producers unless licensed to do so was struck down as violating the Commerce Clause as it was applied. The Maryland law does not forbid any scrap processor from doing business within the State. Scrappers must be licensed in order to obtain bounty payments, but the ability to receive bounty payments has nothing to do with the fundamental right of doing business.

The case of *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156 (1948), presented an extraordinary situation where a South Carolina statute required non-residents to pay a fee one hundred times as great as that paid by residents for each shrimp boat utilized within South Carolina's three mile maritime belt for the purpose of catching shrimp. Another South Carolina law required all boasts licensed to trawl for shrimp in State waters to "dock at a South Carolina port and unload, pack, and stamp their catch 'before shipping or transporting it to another State,'" *id.* at 390-91, 68 S. Ct. at 1159. This Court found that the statute which made it unlawful to unload shrimp anywhere but a South Carolina port was "inimical to the commerce clause," *id.* at 406, 68 S. Ct.

at 1167.[27] Maryland's bounty program imposes the same license fee upon all scrap processors, and does not forbid the removal of automobile hulks from the State in any manner.

The constitutionality of a portion of New York's Milk Control Act was placed before this Court in *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 55 S. Ct. 497 (1935). A segment of the Act provided for a system of minimum prices to be paid by milk dealers to producers. Conflict arose when a New York dealer purchased milk from a Vermont distributor at prices below the New York scale. At issue was whether New York could *prohibit,* within its borders, the sale of milk bought outside the State unless the price paid to the producers would have been lawful upon a like transaction within New York. Writing for a unanimous Court, Mr. Justice Cardozo stated that "commerce between the states is burdened unduly when one state regulates by indirection the prices to be paid to producers in another," *id.* at 524, 55 S. Ct. at 501. Consequently, the New York statute was declared invalid. Maryland's law does not purport to prohibit the sale of scrapped cars under any circumstances, in any State, at any price.

In *Foster-Fountain Packing Co. v. Haydel,* 278 U.S. 1, 49 S. Ct. 1 (1928), the State of Louisiana had, by statute, *forbidden* the exportation of shrimp from the State from which the heads and hulls had not been removed. Because this law directly obstructed and burdened interstate commerce, it could not withstand constitutional scrutiny. The closely related Louisiana Oyster Act met a similar fate in *Johnson v. Haydel,* 278 U.S. 16, 49 S. Ct. 6 (1928), for identical reasons. Maryland's bounty scheme does not regulate the exportation or importation of automobile scrap in any fashion.

[27] The foremost constitutional infirmity in *Toomer* was an impingement of the Privileges and Immunities Clause of the Constitution, U.S. Const. art. IV, §2. No such violation can be present in this case because Appellee is a corporation, and corporations are not within the protection of the Privileges and Immunities Clause, Asbury Hosp. v. Cass County, 326 U.S. 207, 210-11, 66 S. Ct. 61, 63 (1945).

Similarly, in *Pennsylvania v. West Virginia,* 262 U.S. 553, 43 S. Ct. 658 (1923), this Court foiled an attempt by the State of West Virginia "to *compel* the retention within the state of whatever gas may be required to meet the local needs for all purposes," *id.* at 594, 43 S. Ct. at 664 (emphasis supplied). Maryland is not attempting to compel the retention of scrap metal within her borders. On the contrary, Maryland is trying to put as much scrap into the stream of interstate commerce as her limited resources will allow.

Through the enactment of the bounty program, Maryland has not endeavored to "place itself in a position of economic isolation," and the operation of the bounty statutes have not placed "an unreasonable clog upon the mobility of commerce," *Baldwin v. G.A.F. Seelig, Inc., supra,* 294 U.S. at 527, 55 S. Ct. at 502. No prohibitions or restrictions of any sort are imposed on the interstate movement of scrap metal or automobile hulks. In fact, the Maryland scheme furtners interstate commerce. More scrap metal has undoubtedly been placed in interstate commerce since the inauguration of Maryland's program than there had been prior to its implementation. Indeed, this results from the achievement of one of the aims of the legislation.

There is a fundamental omission in the District Court's resolution of the question of how Alexandria was affected by the Maryland legislation, and whether or not any adverse effects entitled Alexandria to relief under the Constitution. Alexandria attempted to show that after the passage of the 1974 amending legislation

it was worse off financially than it had been previously. Even if this showing could be made, it would not have any constitutional impact. Alexandria's argument implicitly assumes that it was *entitled* to receive bounty payments prior to the 1974 amendment, and that any reduction in those payments resulted in injury to its financial position which could be rectified under the Constitution.

This certainly cannot be the correct method of measuring the effect of the 1974 legislation on Alexandria's business in so far as the Constitution is concerned. Rather, to determine whether or not the 1974 Maryland law had a cognizable effect on Alexandria, the proper procedure would be to measure Alexandria's situation as it existed in 1969 before *any* bounty program existed. At best, Alexandria is only *entitled* to reap whatever benefit it can derive from the free marketplace. Neither Alexandria, nor any other wrecker or scrapper, whether located within Maryland or without, is "entitled" to receive price-supportive bounty payments as a matter of right. Therefore, whether or not Maryland's scheme disrupts the natural market position to which Alexandria has a right can only be determined by comparing its post-*amendment* position with its pre-*program* predicament. When this comparison is made, the only conclusion which can be factually supported is that Alexandria is in a better position now, after the passage of the 1974 amendment, than it was before any program existed — it might have been in an even more enviable position at some other point in time, but that was a position which it enjoyed as a result of Maryland's generosity, and not as a matter of right. Because Alexandria still participates in Maryland's program, although not as actively as it once did, it continues to reap some benefits from the Maryland treasury, which is more than it received prior

to the 1969 legislation. It should not be overlooked that, even today, Alexandria can participate in Maryland's program to an unlimited extent, as long as it follows the avenues open to non-Maryland scrappers. That these procedures are not even burdensome can be distilled from the absence of any other non-Maryland scrap processors in this litigation. *See also* Affidavit of Thomas E. Harris ¶ 11 (A. 86A).

Alexandria's complaint is really that its bounty receipts have not increased by as much as it would have liked. Such a grievance may not be remedied by recourse to the Commerce Clause. For even if the bounty program indirectly affects interstate commerce, such a tenuous connection does not do violence to the Constitution, *Milk Control Board v. Eisenberg Farm Prods.*, 306 U.S. 346, 351, 59 S. Ct. 528, 530 (1939). The Commerce Clause is not offended by a State statute "which affects interstate commerce only incidentally and remotely," *Shafer v. Farmers' Grain Co.*, 268 U.S. 189, 199, 45 S. Ct. 481, 485 (1925).[28] Certainly that

[28] *See also* the *Minnesota Rate Cases*, Simon v. Shepard, 230 U.S. 352, 410-11, 33 S. Ct. 729, 745 (1913), where Mr. Justice Hughes elaborated on the general theme that the Commerce Clause is not offended by State legislation which has only incidental or tangential effects on interstate commerce.

> In the intimacy of commercial relations, much that is done in the superintendence of local matters may have an indirect bearing upon interstate commerce. The development of local resources and the extension of local facilities may have a very important effect upon communities less favored, and to an appreciable degree alter the course of trade. The freedon of local trade may stimulate interstate commerce, while restrictive measures within the police power of the state, enacted exclusively with respect to internal business, as distinguished from interstate traffic, may in their reflex or indirect influence diminish the latter and reduce the volume of articles transported into or out of the state.

Clause is not disturbed by a statutory scheme which promotes commerce among the States.

B. *Equal Protection Clause*

The District Court ruled that the Maryland statute violated the Equal Protection Clause of the fourteenth amendment because it "creates a classification which has no basis in reason." 391 F. Supp. at 58 (AJS. 22a). Appellants urge that this ruling was clearly erroneous because the Equal Protection Clause is inapplicable to the case at bar.

The Equal Protection Clause provides, in part, that no State shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person *within its jurisdiction* the equal protection of the laws," U.S. Const. amend. XIV, §1 (emphasis supplied). Appellee is a corporation organized under the laws of Virginia,[29] and maintains its scrap processing facilities in Alexandria, Virginia.[30] It is not registered to do business in Maryland, does not, in fact, engage in any business in Maryland,[31] and does not pay any Maryland taxes. Simply stated, Alexandria, being a Virginian not within Maryland, is not entitled to the equal protection of Maryland's laws.

> [T]he Virginia corporation cannot rely upon the clause declaring that no state shall 'deny to any person within its jurisdiction the equal protection of the laws.' That prohibition manifestly relates only to the denial by the state of equal protection to persons 'within its jurisdiction.' . . . The Court cannot assume that those words were inserted

[29] Stipulation of Facts ¶1 (A. 58A).

[30] Stipulation of Facts ¶4 (A. 58A).

[31] Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss 79 (R. 197).

> without any object, nor is it at liberty to eliminate them from the constitution, and to interpret the clause in question as if they were not to be found in that instrument.

Blake v. McClung, 172 U.S. 239, 260-61, 19 S. Ct. 165, 173 (1898) (Harlan, J.); *see also Sully v. American Nat'l Bank*, 178 U.S. 289, 20 S. Ct. 935 (1900). "Manifestly, the obligation of the State to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction," *Missouri v. Canada*, 305 U.S. 337, 350, 59 S. Ct. 232, 236 (1938). *See also Township of River Vale v. Town of Orangetown*, 403 F.2d 684, 687 (2d Cir. 1968).

Although it is, admittedly, a point not often litigated, the "within its jurisdiction" language contained in the fourteenth amendment poses an absolute bar to Alexandria's equal protection argument. That this phrase retains operative force today cannot be doubted. *See Graham v. Richardson*, 403 U.S. 365, 371, 91 S. Ct. 1848, 1851 (1971) ("[T]he term 'person' . . . entitles both citizens and aliens to the equal protection *of the laws of the State in which they reside.*" [emphasis supplied]).

Even if this were the typical equal protection situation, where the complainant was entitled to the equal protection of the laws, the District Court's application of fourteenth amendment principles in this case was incorrect. In the proper case, when the constitutionality of a validly enacted State statute is questioned, the starting point for the resolution of the issue is always the same: the State law is presumed to be constitutional, *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364, 93 S. Ct. 1001, 1006 (1973); *Davis v. Department of Labor & Indus.*, 317 U.S. 249, 257, 63 S. Ct. 225, 229 (1942). An assailant attempting to overcome this presumption undertakes a most difficult

chore. He must successfully "'negative every conceivable basis which might support'" the legislative arrangement, as well as explicitly demonstrate that a classification created by the statute "'is a hostile and oppressive discrimination against particular persons,'" *Lehnhausen v. Lake Shore Auto Parts Co., supra.*

The criteria by which an allegation of constitutional infirmity encompassing the denial of the equal protection of the laws must be tested have been settled for many years. These rules are:

> 1. The equal-protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.

Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79, 31 S. Ct. 337, 340 (1911). This Court has repeatedly recognized the continuing validity of these propositions since their original statement in 1911, *see, e.g., Graham v. Richardson, supra,* 403 U.S. at 371, 91 S. Ct. at 1852; *Dandridge v. Williams,* 397 U.S. 471, 485-87, 90 S. Ct. 1153, 1161-62 (1970); *McGowan v. Maryland,* 366 U.S. 420, 426, 81 S. Ct. 1101, 1105 (1961); *Morey v. Doud,* 354

U.S. 457, 463-64, 77 S. Ct. 1344, 1349 (1957); *Rast v. Van Deman & Lewis Co.,* 240 U.S. 342, 357, 36 S. Ct. 370, 374 (1916).

In 1969 the Maryland Legislature perceived that the accumulation of abandoned automobiles presented a problem of statewide proportion. Consequently, a bounty program was enacted as a major part of a larger scheme "designed to arrest the increasing accumulation of automobile hulks, and to promote their recycling," *Administrator v. Vogt, supra,* 267 Md. at 675, 299 A.2d at 9. Perhaps the legislation is not perfect, and perhaps a different form of legislation would provide a more complete solution to the problem which the Legislature sought to remedy. However, the fact that a legislative scheme is imperfect does not lead to the conclusion that it denies the equal protection of the laws.

"[T]he Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all," *Dandridge v. Williams, supra,* 397 U.S. at 486-87, 90 S. Ct. at 1162; *Williamson v. Lee Optical of Oklahoma,* 348 U.S. 483, 489, 75 S. Ct. 461, 465 (1955). "[A] state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose," *Nebbia v. New York,* 291 U.S. 502, 537, 54 S. Ct. 505, 516 (1934). That the constitutional limits within which State legislatures are free to act are quite broad was emphasized in *Ferguson v. Skrupa,* 372 U.S. 726, 730-31, 83 S. Ct. 1028, 1031 (1963), where Mr. Justice Black wrote the opinion for a unanimous Court:

> We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws. As

> this Court stated in a unamimous opinion in 1941, 'We are not concerned . . . with the wisdom, need, or appropriateness of the legislation.' Legislative bodies have broad scope to experiment with economic problems, and this Court does not sit to 'subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.' It is now settled that States 'have power to legislate against what are found to be injurious practices in their internal commercial affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law.' [Footnotes omitted.]

Appellants maintain that Alexandria does not have a constitutional right to participate in Maryland's bounty program under *any* circumstances. However, that is not necessarily an issue presented by this case, for the effect of the Maryland law as amended is merely to limit the *means* by which scrap processors who do not operate plants located in Maryland may obtain hulks eligible for bounty payments. Only the indemnity agreement avenue is closed to non-Maryland scrappers. Other methods of acquisition remain available for use by all scrappers. Furthermore, the law places no limit of any kind upon the amount of payments which *any* scrapper may receive under the program.

Alexandria not only asserts that it has a right to participate in Maryland's program, but also claims that it can do so on its own terms. In fact, it is the State of Maryland which is distributing the benefits involved, and which has broad latitude to determine the extent, and the recipients, of the bounties, as well as the means by which the payments will be made.

With respect to satisfying the Equal Protection Clause, if indeed that Clause was applicable, the means by which Maryland's law differentiates between Maryland and non-Maryland scrap processors, need only be "rationally based and free from invidious discrimination," *Dandridge v. Williams, supra,* 397 U.S. at 487, 90 S. Ct. at 1162. As long as its "judgments are rational, and not invidious," the Maryland Legislature's efforts to tackle the problem posed by the accumulation of automobile hulks "are not subject to a constitutional straightjacket. The very complexity of the problems suggests that there will be more than one constitutionally permissible method of solving them," *Jefferson v. Hackney,* 406 U.S. 535, 546-47, 92 S. Ct. 1724, 1731 (1972).

"A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it," *McGowan v. Maryland, supra,* 366 U.S. at 426, 81 S. Ct. at 1105; *Dandridge v. Williams, supra,* 397 U.S. at 485, 90 S. Ct. at 1161. Many logical reasons exist for the distinction in the Maryland law. By not allowing non-Maryland scrappers to acquire autos by executing an indemnity agreement at least four purposes are achieved: 1. It tends to insure that bounty recipients are amenable to judicial process in Maryland; 2. It insures that the indemnity agreement is enforceable; 3. It tends to insure that bounty payments will only be made on autos abandoned in Maryland; and, 4. It tends to limit the amount of money which the State obligates itself to pay out of its limited resources to non-taxpayers.

These reasons may not be exhaustive, nor may they be logically perfect. However, they are certainly sufficient to pass muster under the Equal Protection Clause. All the reasons which the State might advance

in justification of the statutory distinction need not be explored, so long as a "solid foundation" for the law "can be found in the State's legitimate interest in encouraging" the removal of abandoned automobiles from its highways and junkyards, *Dandridge v. Williams, supra,* 397 U.S. at 486, 90 S. Ct. at 1162. Nothing in the Constitution requires the State of Maryland "to subordinate or compromise its legitimate interests solely to create a more comprehensive" bounty program than it already has, *Geduldig v. Aiello,* 417 U.S. 484, 496, 94 S. Ct. 2485, 2491 (1974).

The other hurdle which the Maryland statute must clear in order to satisfy equal protection guarantees is that it not discriminate invidiously. "The prohibition of the Equal Protection Clause goes no further than the invidious discrimination," *Williamson v. Lee Optical of Oklahoma, supra,* 348 U.S. at 489, 75 S. Ct. at 465, because "it is only 'invidious discrimination' which offends the Constitution," *Ferguson v. Skrupa, supra,* 372 U.S. at 732, 83 S. Ct. at 1032.

A limitation upon one's ability to secure bounty payments for destroying junked automobiles to as great an extent as that possessed by another is certainly not a deprivation of any fundamental right, and has never been deemed an "invidious discrimination." Examples of such improper discriminations were set forth in *Village of Belle Terre v. Boraas,* 416 U.S. 1, 7, 94 S. Ct. 1536, 1540 (1974), and include: the right to travel, the right to vote, the right of association, the right of access to the courts, and rights of privacy. Other impermissible classifications are those based on alienage, nationality, and race, *Graham v. Richardson, supra,* 403 U.S. at 372, 91 S. Ct. at 1852. None of these classifications or fundamental rights are involved in this case.

Alexandria does not have a constitutional right to participate in Maryland's bounty scheme. To the extent that it does participate it does so only to the degree which the Maryland Legislature has provided by statute. This is particularly true here where the Legislature has not limited the extent of Alexandria's participation in the program, but only the means by which it may partake of the benefits. In fact, Alexandria can only benefit from the present statutory scheme: it is not subject to any of the non-bounty aspects of the Maryland program which are enforced by the imposition of various sanctions. The State of Maryland certainly could not enforce an assessment against a non-Maryland concern for retaining old vehicles for more than eighteen months. Nor could it charge a Virginian with a misdemeanor for storing too many cars within a defined area in Virginia.[32] Surely Maryland "has no power to project its legislation into" Virginia, or any other State, *Baldwin v. G.A.F. Seelig, Inc., supra,* 294 U.S. at 521, 55 S. Ct. at 499. "[N]o State can exercise direct jurisdiction and authority over persons or property without its territory," and "the laws of one State have no operation outside of its territory, except so far as is allowed by comity," *Pennoyer v. Neff,* 95 U.S. 714, 722 (1877). Therefore, Maryland has no obligation under the Equal Protection Clause to extend the benefits of its legislation to non-Marylanders for the same reason that it may not enforce any obligations imposed by its laws beyond its jurisdiction.

This is not a case such as *Morey v. Doud, supra,* 354 U.S. at 467, 77 S. Ct. at 1351, where a State has singled out one of its residents for, when compared with other residents of the same class, special treatment. As was the case in *Dandridge v. Williams, supra,* 397 U.S. at

[32] See notes 21 and 22 *supra* and accompanying text.

479, 90 S. Ct. at 1159, Maryland has finite resources, and an obvious interest in distributing the available resources in the manner in which she perceives the most benefit will be derived, *Geduldig v. Aiello, supra,* 417 U.S. at 496, 94 S. Ct. at 2491. Whether or not one agrees with Maryland's determination of how these resources should be distributed, "there is nothing in the Constitution that forbids it," *Jefferson v. Hackney, supra,* 406 U.S. at 549, 92 S. Ct. at 1733.

Alexandria does not have a cognizable constitutional claim solely by virtue of the fact that it might not be making as much money now as it was at some time in the past. "The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases," *Nebbia v. New York, supra,* 291 U.S. at 527-28, 54 S. Ct. at 512. Nor does the fourteenth amendment "protect a business against the hazards of competition," *Hegeman Farms Corp. v. Baldwin,* 293 U.S. 163, 170, 55 S. Ct. 7, 9 (1934). The Constitution would even permit the State of Maryland to enter into the scrapping business and thereby directly compete with private proprietors, *Nebbia v. New York, supra,* 291 U.S. at 529-30, 54 S. Ct. at 513.

If Alexandria believes that price-supportive bounty payments are essential to its survival, its proper redress is not to be found with the courts, but rather with the legislature — and the appropriate legislature in this case is that sitting in Richmond, Virginia, and not that body which deliberates in Annapolis, Maryland. *See Baldwin v. G.A.F. Seelig, Inc., supra,* 294 U.S. at 524, 55 S. Ct. at 501. Virginia is more than four times as large as Maryland, and is populated by over 20% more people, 1975 Information Please Almanac 633, 644, 699 (1974). Surely the Commonwealth of Virginia is in a position to establish its own bounty program if it so desires, and

her citizens need not depend upon the treasuries of other States for sustenance. It is that Commonwealth, from which Alexandria derives its existence, to which it presumably pays its taxes, and under whose laws it is entitled to equal treatment, which is in the position to provide the relief which Alexandria would have.

II.

APPELLANTS WERE DENIED DUE PROCESS OF LAW BECAUSE MATERIAL FACTS WERE IN DISPUTE AND THE DISTRICT COURT GRANTED SUMMARY JUDGMENT IN FAVOR OF APPELLEE.

Although Appellants believe that, as a matter of law, Alexandria may not successfully press its constitutional claims, the unusual procedural handling of this case by the District Court also deserves this Court's attention. It is Appellant's position that the grant of summary judgment for Alexandria was improper, and resulted from a misapplication of the Federal Rules of Civil Procedure. This, in turn, led the Court to apply improper standards in the course of determining the merits of the controversy.

Prior to the designation of the three-judge court the single Judge to whom the case was originally assigned requested that the parties submit affidavits concerning the facts in the case in order that the need for an evidentiary hearing could be obviated. Pursuant to the Judge's request, Alexandria submitted an affidavit of Isadore Gittleson, Alexandria's General Manager and Assistant Treasurer. Shortly thereafter, the State of Maryland filed the affidavit of Thomas E. Harris, Chief of the Licensing and Consumer Services Division of the Motor Vehicle Administration of the Maryland Department of Transportation. Mr. Harris administers Maryland's bounty program.

In the course of attempting to demonstrate how Alexandria was adversely affected by the 1974 Maryland legislation, Mr. Gittleson made numerous allegations concerning the number of automobile hulks for which Alexandria claimed bounties. Mr. Gittleson explained the method by which Alexandria tabulated the figures on hulks received under indemnity agreements: "Those indemnity agreements submitted for a bounty payment to the Maryland Motor Vehicle Administration, and accounted for on the data processing printout received monthly from that Administration, were all deemed to have been submitted for vehicles coming from Maryland, since *no such agreement is submitted to the Motor Vehicle Administration unless the tower executing it is known to customarily haul from Maryland,*" Gittleson Affidavit ¶5 (A. 75A-76A) (emphasis supplied).

In his affidavit Mr. Harris noted that the Motor Vehicle Administration (MVA) operated on the premise that the 1974 legislation restricted bounty payments to be made only on cars abandoned in Maryland, Harris Affidavit ¶4 (A. 84A-85A). Mr. Harris stated that:

> *Contrary to the assertion made by Mr. Isadore Gittleson in paragraph five of his Affidavit . . .* prior to the effective date of [the 1974 legislation, Alexandria] submitted in connection with claims for bounty payments a number of indemnity agreements which indicated that the origin of the vehicle was the Police Department of the District of Columbia.

Harris Affidavit ¶5 (emphasis supplied) (A. 85A).

Mr. Harris made further recitals which directly placed the accuracy of Mr. Gittleson's figures in doubt. Mr. Harris averred that it was the practice of scrap processors to require their sources of hulks to detach the

Vehicle Identification Number Plate (VIN Plate)[33] prior to the vehicle's arrival at the scrapper's place of business, and then present this VIN Plate to MVA, with the appropriate documentation, when bounty payment was sought on a vehicle. As a result of this practice Mr. Harris swore that, on at least two occasions prior to the effective date of the legislation, Alexandria had presented a claim for bounty payment for a vehicle which another scrapper had previously certified as having been destroyed! Because it was not until July 1, 1974, that MVA developed the computer capability to compare vehicle destruction reports, it had been possible for Alexandria to claim bounties for vehicles abandoned outside of Maryland if they had been received accompanied by the VIN Plates of vehicles which had previously been titled in Maryland. Harris Affidavit ¶¶7-9 (A. 85A-86A).

Because, along with a Stipulation of Facts, these affidavits were the only evidence before the District Court, there existed a clear dispute over material facts. The District Court recognized this discrepancy, but ignored it. The Court noted "that the factual positions of the parties differ in some respects," but opined that "the unconverted facts" entitled Alexandria to summary judgment. 391 F. Supp. at 48 (AJS. 3a). More revealing is the Court's statement about the quality of Mr. Harris' affidavit:

> defendants have not proffered a scintilla of factual support for their assumption that non-resident

[33] Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66½, §11-1002.2(f)(5), provides that, in cases where a bounty is claimed by the submission of an indemnity agreement, the manufacturer's serial number or identification number shall be satisfactory proof, along with the indemnity agreement, that the vehicle has been destroyed. This number appears on a VIN Plate.

> processors are more likely than in-state processors to claim bounties for vehicles abandoned outside of Maryland. Although defendants *have suggested* that plaintiff has submitted to the MVA several indemnity agreements indicating the origin of a destroyed vehicle to have been the District of Columbia . . . .

391 F. Supp. at 57 (AJS. 20a) (emphasis supplied).

There were only three documents placed in evidence in this case: a Stipulation of Facts, and two affidavits. Yet the District Court deemed a sworn statement made in one of those affidavits to have been merely a *suggestion,* presumably to lend credence to the Court's preceding claim that defendants had "not proffered a scintilla of factual support" for the contention that limiting bounty payment to Maryland scrappers tended to insure that the vehicles for which bounties were claimed had been abandoned in Maryland. In fact, Appellants *had* offered this proof in the form of a sworn affidavit, but the Court sloughed this off as only a "suggestion." The Court should not have degraded the veracity of a sworn affidavit, particularly where the affiant was not testifying in open court, and thus his demeanor could not be observed.

In support of Mr. Harris' statement that Alexandria had been submitting bounty claims for cars which had been abandoned outside of Maryland, Appellants produced 56 indemnity agreements submitted by Alexandria to MVA, for vehicles delivered during March, 1974, which indicated the source of these autos to be the District of Columbia Police Department. This bulky packet of agreements was not appended to the Harris Affidavit — although copies were presented to Alexandria — because Appellants saw nothing to be gained by so doing. Mr. Harris had directly contra-

dicted a statement made in Mr. Gittleson's affidavit, and Appellants believed, and still contend, that this created a *prima facie* dispute over a material fact which should have necessitated an evidentiary hearing. At such a hearing the introduction of the 56 agreements, and similar ones from other months, would have been proper to resolve the competing contentions. As it happened, the Harris affidavit was the last of the three documents to be submitted to the District Court, and, therefore, nothing at all was before the Court which even purported to refute Mr. Harris' statement.

These evidentiary difficulties are most significant with respect to the Commerce Clause aspect of this case. Alexandria had the burden of showing that Maryland's bounty scheme placed an undue burden on interstate commerce. The conflicting evidence concerned one facet of that question: How much of a burden was Alexandria forced to bear as a result of the 1974 legislation? For example, was there actually a decrease in the number of vehicle hulks leaving Maryland and entering Virginia? If so, was that decrease significant? Certainly if the number of scrapped automobiles coming out of Maryland was insubstantially reduced there could be no burden placed on interstate commerce.

Moreover, at a full evidentiary hearing this would have been only one aspect of the broader issue presented by Alexandria's Commerce Clause challenge. For, in order to prevail, Alexandria would have had to show that Maryland's program placed an undue burden on interstate commerce — *not* simply that a burden was imposed on the Alexandria Scrap Corporation. Commerce between Maryland wreckers and Alexandria, or even all commerce between Maryland and the Commonwealth of Virginia, is only one component of interstate

commerce. In order to ascertain the effect of Maryland's program, interstate commerce *as a whole* must be examined.

Indeed, it is Appellant's contention that the Maryland bounty program is a boon to interstate commerce whether or not the Alexandria Scrap Corporation finds itself disadvantaged. The program, since its institution, has unquestionably led to more scrap metal being placed in the flow of commerce then was the case before its enactment. This stream of commerce includes the greater amounts of scrap metal shipped to steel mills in Pennsylvania and Maryland, and to other States in which steel is manufactured. In turn this has provided more steel for the production of new automobiles in Michigan, and structural steel for use in all States. All of the specific consequences of Maryland's program cannot, of course, be enumerated here. However, had Appellants been accorded the opportunity to present this evidence, the District Court would have at least applied the correct Commerce Clause standard to this case: what was the effect of the Maryland law on the *totality* of interstate commerce, rather than its effect on only one minute component of that commercial exchange.

Furthermore, the District Court itself found that the extent of the injury claimed to have been suffered by Alexandria had not been established when it wrote:

> While, in the current summary judgment posture of this case, the extent to which old cars constitute the lifeblood of the scrap metal industry and the exact percentage of ferrous scrap sold to steel mills represented by vehicles eight years old or older *have not been established,* the importance of such vehicles to the scrap industry is without doubt substantial.

391 F. Supp. at 62 (AJS. 29a) (emphasis supplied). The Court is saying that the extent of the injury claimed to have been suffered by Alexandria has "not been established." No matter what measure of damage one might employ to determine the precise effect of the 1974 amendment on Alexandria, there is no doubt that the foremost issue is whether an undue burden has been imposed on interstate commerce by the Maryland legislation. It is impossible to determine whether that burden is "undue" unless that burden is measured, and yet, here the Court notes that although the burden has not been established, that burden is "without doubt substantial." Thus, the District Court somehow devined a conclusion which disposed of the ultimate issue in the case, while acknowledging that Alexandria had not established the extent of the damage purported to have been wrought by the 1974 amendment.

The above excerpt from the District Court's opinion is also revealing in another respect. The Court seems to imply that because of "the summary judgment posture of this case," the fact that nothing definite has been established is of little, if any, moment. This seems to say that the burden of proof in summary judgment settings is somewhat less rigorous than it is in cases where evidentiary hearings are held. Nothing could be further from the truth. The standard for granting summary judgment demands a much stronger showing than that required for judgment after a full trial.

In this case, Alexandria filed a complaint which Appellants then moved to dismiss. The Court — not yet a three-judge court — then requested that each party submit an affidavit. These were submitted and received, and, by operation of Rule 12(b) of the Federal Rules of Civil Procedure, Appellant's motion to dismiss was

transformed into a motion for summary judgment, which, in turn, automatically raised a cross-motion for summary judgment by Alexandria.[34]

Rule 12(b) states that such motions must be disposed of in accordance with Rule 56. Rule 56 provides that summary judgment shall be rendered if all of the pleadings and affidavits "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Manifestly, Alexandria did not sustain the burden of showing that it was entitled to summary judgment.

> [Rule 56] authorizes summary judgment 'only where the moving party is entitled to judgment as a matter of law, where it is quite clear what the truth is, * * * [and where] no genuine issue remains for trial . . . .'

Poller v. Columbia Broadcasting Sys., Inc., 368 U.S. 464, 467, 82 S. Ct. 486, 488 (1962); *see also Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620, 627, 64 S. Ct. 724, 728 (1944). As has been demonstrated a dispute over a genuine issue certainly did exist. This is especially evident when it is recognized that "'[o]n summary judgment the inferences to be drawn from the underlying facts contained in [the moving party's] materials must be viewed in the light most favorable to the party opposing the motion,'" *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-59, 90 S. Ct. 1598, 1609 (1970). With respect to Alexandria's motion for summary judgment, when Appellants' evidentiary offerings are examined in the light most favorable to them, the

[34] An examination of the first few pages of the transcript of the hearing will readily reveal that everyone, including the members of the Court, was unsure of the procedural posture of the case. At first neither counsel believed that summary judgment motions were before the Court. Transcript of Proceedings 2-7 (A. 92A-96A).

existence of a dispute over a genuine issue cannot be denied.

The procedural handling of this case in the District Court was most likely the result of a desire to save time by disposing of this case without an evidentiary hearing. Whatever may be the advantages of conserving valuable judicial time, the most expeditious route cannot be followed where it leads to a denial of due process of law to one of the parties. The Rule 12(b) provision providing for the automatic conversion of some motions to dismiss into summary judgment motions presents an enticing alternative to the rigors of a full hearing. However, it is a lure which must be resisted when summary judgment would be inappropriate. "Under this rule, *bona fide* factual disputes may not be disposed of through the use of affidavits, and the rule cannot be used as a substitute for a trial of the case," *Hanley v. Chrysler Motors Corp.*, 433 F.2d 708, 711 (10th Cir. 1970); *Eagle v. Louisiana & Southern Life Ins. Co.*, 464 F.2d 607, 608 (10th Cir. 1972). Disposing of factual disputes without according the parties an opportunity to be fully heard amounts to a denial of due process of law.

Judging from the amount of recent litigation in the United States Courts of Appeals, it appears that Rule 56 is increasingly being abused. In response to this practice the Circuit Courts have been unanimous in deploring trials by affidavit under the guise of motions for summary judgment. "Summary judgment is not to be a trial by affidavit," *Gutor International AG v. Raymond Packer Co.*, 493 F.2d 938, 944 (1st Cir. 1974). *See also Walgren v. Howes*, 482 F.2d 95, 98 (1st Cir. 1973); *Benton-Volvo-Metairie, Inc. v. Volvo Southwest, Inc.*, 479 F.2d 135, 138 (5th Cir. 1973); *Zahora v. Harnischfeger Corp.*, 404 F.2d 172, 175 (7th Cir. 1968);

Champlin v. Oklahoma Furniture Mfg. Co., 269 F.2d 918, 922 (10th Cir. 1959).

Furthermore, in order to satisfy Rule 56, Alexandria *also* had to have been entitled to judgment as a matter of law. That Alexandria was not so entitled has been set forth in the Commerce Clause and Equal Protection Clause portion of this Brief. For these reasons, Appellants were denied due process of law when the District Court granted summary judgment for Alexandria.

It is axiomatic that no court should ever decide a constitutional issue if the matter before it can be disposed of on other than constitutional grounds. In the context of three-judge courts faced with constitutional challenges to State statutes, the importance of full evidentiary hearings is particularly crucial. Such courts must be especially careful not to dispose of constitutional questions prematurely for at least two additional reasons: 1. The party who is unsuccessful before a three-judge court is never assured of complete appellate review because of the relatively few appeals which this Court decides on the basis of full briefs and oral argument; and, 2. The number of direct appeals from decisions of three-judge courts to this Court would be reduced. As occurred in this case, the three-judge court reached a constitutional question which it very well might have avoided had a complete hearing been conducted. With the number of direct appeals increasing at such a rate that a serious overcrowded docket problem exists in this Court today, the necessity for encouraging exacting procedures in the district courts has been enhanced.

CONCLUSION

For the reasons expressed above, the Appellants, defendants below, were entitled to judgment as a matter of law. Accordingly, the decision of the District Court must be reversed, and judgment entered for the Appellants.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,

Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT OF THREE JUDGES FOR THE DISTRICT OF MARYLAND

BRIEF OF APPELLEE

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IN THE

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OCTOBER TERM, 1974

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HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,

Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT OF THREE JUDGES FOR THE DISTRICT OF MARYLAND

BRIEF OF APPELLEE

OPINION BELOW

A three-judge panel of the United States District Court for the District of Maryland rendered an opinion which is reported at 391 F. Supp. 46 (1975). The opinion is reprinted in full beginning at page 1a of the Appendix to the Jurisdictional Statement (AJS 1a-31a).

JURISDICTION

Jurisdiction to entertain this appeal is premised on 28 U.S.C. §1253. The judgment of the District Court was entered on March 12, 1975 (R. 356). This Court noted probable jurisdiction on October 6, 1975.

CONSTITUTIONAL PROVISIONS INVOLVED

The Commerce Clause of the United States Constitution (Article I, Section 8, Clause 3):

> The Congress shall have Power * * * to regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes * * *.

The Equal Protection Clause of the United States Constitution (Fourteenth Amendment, Section 1):

> * * * No State shall * * * deny to any person within its jurisdiction the equal protection of the laws.

STATUTES AND REGULATIONS INVOLVED

Section 11-1002.2(f)(5) of the Motor Vehicle Laws of Maryland, 6 Annotated Code of Maryland, Art. 66½, §11-1002.2(f)(5) (1970 Repl. Vol., 1975 Cum. Supp.),[1] as reenacted with amendments by Chapter 465 of the Laws of Maryland effective July 1, 1974 (A. 15A), appears in its full text as follows:

> (5) Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is otherwise totally inoperable. In those cases only, a scrap processor whose plant is physically located and operating in this state shall execute an indemnity agreement that shall be filed with the Motor Vehicle Administration. The indemnity agreement shall contain the name, address and signature of the person delivering the vehicle. The indemnity agreement, and the manufacturers serial or identification number shall be acceptable for payment of the full bounty authorized by section 5-205 if the vehicle identified in the indemnity agreement was titled in this state. Otherwise, for the purpose of administering the provisions of this section, the provisions of section 5-205 shall not apply.

[1] Hereinafter, all references to current sections of the Motor Vehicle Laws of Maryland (6 Annotated Code of Maryland, Art. 66½) will be cited only by Section number and Appendix page reference. The pertinent statutes are reprinted in the Appendix (A. 17A-30A).

(A. 29A). The District Court declared the limiting clause of Section 11-1002.2(f)(5), "whose plant is physically located and operating in this State", to be invalid under the Commerce and Equal Protection Clauses and enjoined the enforcement of Section 11-1002.2(f)(5) to that extent (AJS. 31a).

The complete text of Section 5-205 (A. 22A), as well as other current provisions of the Motor Vehicle Laws of Maryland, are contained in the Appendix (A. 17A-30A).

Maryland regulations governing scrap processors, wreckers, and abandoned vehicles, M.A.R.R. §11.02.05, as promulgated by the Motor Vehicle Administration of Maryland pursuant to Section 5-207 (A. 23A), are also set forth in the Appendix (A. 30-38A).

QUESTIONS PRESENTED

Raw scrap metal in the form of automobile hulks is the subject of nationwide dealings. By comprehensive legislation, Maryland regulates the transfer and disposition of Maryland hulks and has licensed the 16 scrap processors to which such hulks may be delivered. Only nine licensed scrap processors operate plants physically located in Maryland, but all 16 are engaged in intense

competition for the purchase of Maryland hulks. Maryland pays a statutory bounty for each hulk delivered for processing, which creates an artificially enhanced value for Maryland hulks in excess of prevailing market prices for scrap metal.

Most of the hulks are abandoned vehicles over eight years old which have no engine or are otherwise totally inoperable. Section 11-1002.2(f)(5) exempts that class of hulks from title and police notification procedures, thus facilitating their prompt disposal for processing. Until that statute was amended in 1974, all exempt hulks were eligible for bounty payments whether processed in Maryland plants or exported for processing in contiguous states.

In 1974, Section 11-1002.2(f)(5) was amended so as to protect Maryland-based processors (1) by requiring their suppliers to indemnify them against claims and (2) by conferring upon them an exclusive right to collect bounties for hulks exempt from title and notification requirements. Because these hulks now commanded artificially enhanced value only if processed in Maryland, the practical effect of the amendment was to discourage their export in interstate commerce and to secure to Maryland processing plants a virtual monoply over the domestic supply of hulks.

The questions presented on this appeal may be reformulated as follows:

1. Whether the Commerce Clause permits a State, in regulating the disposition of vehicular scrap metal, to pay bounties creating an artificially enhanced value for scrap processed in plants "physically located and operating" in that State, for the purpose of protecting its domestic plants against competition and with the practical effect of withdrawing from interstate commerce most of the scrap which was formerly exported for processing in contiguous states?

2. Whether the Equal Protection Clause permits a State, having licensed all scrap processors meeting prescribed criteria, to assert a discriminatory preference in favor of licensees with plants "physically located and operating" within its borders and to deny to licensees similarly situated in every respect (other than plant location) the right to compete with the favored class on equal terms?

3. Whether a three-judge federal court is required to hold a full-dress trial on the merits before enjoining the enforcement of an unconstitutional statute, where the invalidity is apparent on the face of the statute, the material facts are stipulated or undisputed, the points of alleged dispute are immaterial, and all parties are adequately prepared for a prompt adjudication of the merits?

STATEMENT OF THE CASE

According to Appellants, "[t]he material facts surrounding this case are relatively simple". (Br. 4). These "relatively simple" facts are dispatched in a six-page Statement of the Case (Br. 4-9), which, while enviable in its brevity, conveniently glosses over the stipulated and undisputed facts material to this controversy (and especially those which undermine Appellants' contentions). We are obliged to present the record in its necessary detail, as it was presented below.

A. Some Characteristics of the Scrap Metal Industry

Alexandria Scrap Corporation, the Plaintiff-Appellee, is a Virginia corporation which operates extensive scrap metal processing facilities at its plant

in Alexandria, Virginia. Stipulation ¶1, 4 (A. 58A). As a scrap metal processor, Alexandria Scrap Corporation (Alexandria) purchases iron, steel, and nonferrous scrap and processes it into shredded scrap metal or bales for sale, either directly or through brokers, to steel mills and other primary metal producers throughout the United States. Stipulation ¶5 (A. 58A); Affidavit ¶2-3 (A. 74A). In its purchasing, processing and marketing activities Alexandria is engaged in and dependent upon the regular flow of scrap metal in interstate commerce. Stipulation ¶5 (A. 58A); Affidavit ¶6 (A. 76A-77A).

Automobile hulks are a major source of raw scrap metal. Affidavit ¶4-5 (A. 74A-75A). These hulks are converted rapidly into processed scrap by compressing them into bales in a hydraulic press or by shredding them into small chunks of metal in a shredding machine of substantial proportions. Affidavit ¶3 (A. 74A). This heavy equipment has the capacity of processing hundreds of automobile hulks daily. In 1974, for example, Alexandria processed a total of 62,523 hulks — an average of 5,210 per month. Affidavit ¶5 (A. 75A).

In order to participate in the scrap metal industry all scrap processors must invest substantial sums in their heavy equipment. Stipulation ¶10 (A. 59A). As a matter of industrial necessity they must maintain a hydraulic baler and shears, or a shredding machine, or other equipment capable of rendering the scrap acceptable to any smelting operation by the steel mills. Stipulation ¶10 (A. 59A). This equipment often costs in excess of a million dollars and has to be installed permanently at great expense. Stipulation ¶10 (A. 59A). The substantial capital investment required to set up a scrap processing plant has the practical effect of discouraging the entry of new competitors (AJS 22a). Thus in Maryland, where

heavy equipment is required as a statutory pre-requisite to licensing,[2] there are only nine plants located in the entire State which qualify as scrap processors.[3]

Obviously, in order to operate efficiently, all scrap processors need "to feed their extraordinarily expensive equipment"[4] a steady diet of automobile hulks. There is relatively fierce competition among scrap processors for acquisition of the available supply. Stipulation ¶11 (A. 59A); Affidavit ¶8 (A. 78A). Obsolete and abandoned vehicles are purchased in massive quantities, depending upon supply and demand, through a regional network of suppliers — auto wreckers, towing companies, vehicle haulers, government disposal agencies, scrapyard operators, and members of the public generally. Stipulation ¶12 (A. 59A).

Although Alexandria does not operate any processing facilities in Maryland, Stipulation ¶9 (A. 58A), the location of its plant near the Potomac River affords convenient access to Maryland suppliers of abandoned

[2] Stipulation ¶10 (A. 59A). Section 5-202(8) prohibits licensing of a scrap processor unless it maintains a hydraulic baler and shears, or a shredder, or other processing equipment approved by the Motor Vehicle Administration of Maryland (A. 18A) under implementing regulations (M.A.R.R. §11.02.05.44) as having the capability of rendering the scrap acceptable to smelting operations (A. 36A).

[3] These nine are identified in a statistical table (72A), as stipulated by the parties. Stipulation ¶17 (A. 60A-61A). In considering the heavy equipment requirement of Section 5-202(8), the Court of Appeals of Maryland found significance in the fact that only nine Maryland scrap processors have ever been licensed. *Administrator v. Vogt*, 267 Md. 660, 675, 299 A.2d 1, 9 (1973).

[4] *Administrator v. Vogt, supra*, 267 Md. at 675, 299 A.2d at 9. A properly-equipped processor can handle a car per minute and may require as many as 500 hulks per day to achieve peak efficiency. *Id*, 267 Md. at 669-70, 299 A.2d at 6.

vehicles. A substantial portion of Alexandria's trade-in automobile hulks is derived from Maryland sources, which in 1974 accounted for approximately 25,000 vehicles, or precisely 40% of the total number processed by Alexandria in that year. Affidavit ¶5 (A. 75A). Alexandria purchases these vehicles upon delivery to its plant, relying upon independent vehicle suppliers to transport the hulks from Maryland. Affidavit ¶6 (A. 76A-77A). These methods of operation were not altered by Maryland's adoption of licensing and regulatory legislation. Stipulation ¶6 (A. 58A). In 1970, when scrap processors came under the legislation, Alexandria sought and obtained a license which it has maintained continuously, with periodic renewals, to the present time. Stipulation ¶3, 7, 18 (A. 58A, 61A) and exhibit thereto (A. 73A). It is one of the 16 scrap processors authorized by license to acquire and dispose of Maryland-titled vehicles.[5] By obtaining and renewing its license, Alexandria preserved its access to the flow of automobile hulks from Maryland sources. Affidavit ¶9 (A. 79A).

Competition among scrap processors for available supplies of hulks is intensified by violent ups and downs in the market for scrap metal. Stipulation ¶11 (A. 59A). The market value of automobile hulks is heavily dependent upon the prices steel mills are willing to pay for the processed scrap, which in turn is influenced by national and international economic conditions over which Maryland has no control. Stipulation ¶11 (A. 59A). Because there is no central exchange or clearing house for processed scrap, its price is not readily ascertainable on a daily basis. Affidavit ¶17 (A. 83A). Contracts to supply scrap are of short-term duration

[5] Of these 16, Alexandria and six Pennsylvania scrap processors do not operate plants located in Maryland. Stipulation ¶9 (A. 58A-59A).

and the price is dictated by the steel mills, depending entirely upon their requirements in that commodity. Affidavit ¶17 (A. 82-83A). When the mills do not need scrap, the market evaporates. When demand runs high, the mills pay no more than the prevailing market price. Affidavit ¶17 (A. 83A).

Consequently, basic survival in the scrap processing business hinges upon ability to buy old cars at the right time, at the right place, and in the right quantity. Affidavit ¶17 (A. 83A). Although the price of scrap remains subject to wide fluctuations, it has risen dramatically in recent years, attaining record levels in 1974, as technological improvements in processing methods have upgraded the quality of processed scrap and increased its marketability.[6] High prices for scrap tend to accelerate its flow, encouraging the collection of automobile hulks in areas not usually regarded as prime sources. Affidavit ¶16 (A. 82A). It is then that regional competition among scrap processors becomes acute.

B. The Background of Maryland's Legislative Scheme[7]

During its 1967 session, the Maryland Legislature requested the Committee on Taxation and Fiscal Matters of the Maryland Legislative Council to review the growing problem presented by the accumulation of

[6] This phenomenon, which was predicted by the Maryland Legislative Council Committee on Taxation and Fiscal Matters in its 1967 Report (A. 41A), is fully described by Wellemeyer, "For Scrapmen, These Are Tinsel Days," FORTUNE 150, 152-53 (August 1974), a copy of which is filed in the record (R. 204), and reprinted in its entirety, *infra*, at 107.

[7] This Section in its entirety is a verbatim adaptation of the text and footnotes appearing on pages 12-13 of Appellants' Brief.

abandoned and discarded motor vehicles, and to propose legislation to effect a solution to this problem.[8] The Committee reported that "[r]estoring the scrap cycle seems to be the only logical means to rid the countryside of wornout, rusting automobile hulks," and that "the core of the problem was to find ways to speed up the so-called 'scrap cycle'."[9]

> From the evidence presented to the Committee, the objective would seem to be to accelerate the movement of the vehicle from the owner who has decided to discard it, to the auto wrecker who salvages parts and markets the hulk, to the scrap processor who reduces it to scrap marketable at the mills, and finally to the steel mills which convert it into new usable steel.[10]

The Committee went on to say that the optimal movement of discarded vehicles most often bogs down at the wrecker's automobile junkyard. This bottleneck develops because the most profitable part of a wrecker's operation is the sale of usable parts. Because a wrecker's profit margin in the sale of hulks to a scrap processor is so small, any obstruction tends to retard the movement of these vehicles.[11] Some of these obstructions to the free flow of automobile hulks resulted from technological advances in the steel industry which had reduced the market for the kind of scrap that comes from discarded motor vehicles, and the fact that motor vehicle titling laws, and other legal

[8] The Legislature's request was made in the form of Senate Joint Resolution 57, Laws of Maryland, 1967.

[9] Maryland Legislative Council Committee on Taxation and Fiscal Matters 1967 Report 60 (A. 40A).

[10] *Id.* (A. 40A-41A).

[11] *Id.* (A. 41A).

technicalities, frequently cause wreckers to hesitate handling abandoned vehicles.[12]

The Committee recognized that it actually had to address two problems: (1) abandoned motor vehicles, and (2) the accumulation of motor vehicles in junkyards. Owners of worn-out vehicles often abandoned them because it was cheaper and easier than delivering them to an auto wrecker. Wreckers tended to accumulate large numbers of abandoned vehicles in unsightly junkyards because it was a simple means of maintaining inventories of profitable parts, and because there was little, if any, financial inducement to remove the vehicles to a scrap processor.[13]

Remedial legislation was proposed as a means of tackling the problem. The Committee concluded that auto wreckers play a vital role in the disposal of discarded motor vehicles, and that they should be encouraged to handle as many of these vehicles as possible. However, it was felt that wreckers must also be persuaded to move these vehicles into the scrap cycle as soon as practicable after salvaging usable parts.[14]

[12] *Id.* at 60-61 (A. 41A-42A). [In addition, however, the Committee noted: "Technological improvements in the processing of scrap offer some prospect of a better quality of scrap and hence a better price for the product. The shredding process was described to the Committee. A report by the U. S. Department of Commerce *(Iron and Steel Scrap Consumption Problems,* Page 26) says this process, which removes contaminants without burning 'apparently will be the method used to process the bulk of these materials in the future'." *Id,* 60 (A. 41A). In fact, Alexandria utilizes the shredding process and maintains "a shredding machine of substantial proportions." Affidavit ¶3 (A. 74A).]

[13] *Id.* at 61 (A. 42A).

[14] *Id.* at 62 (A. 43A). [In fact, the proposed legislation was vetoed by then-Governor Spiro T. Agnew, who urged creation of a fund "by which the State could furnish an incentive to those in the business to take scrapped vehicles at the end of

C. The Legislative Scheme Prior to July 1, 1974

From its very inception, therefore, remedial legislation was designed to accelerate the movement of automobile hulks into the "scrap cycle" by removing all unnecessary obstructions and by creating incentives for disposal to scrap processors. The Committee's recommendations were adopted when the Maryland Legislature, in its 1969 session, enacted Chapter 556, Laws of Maryland, 1969. This legislation became effective on January 1, 1970 (A. 17A) and provided, *inter alia*, for:

1. The licensing and regulation of scrap processors.[15]

2. The licensing and regulation of certain auto wreckers,[16] including a semi-annual $5.00 assessment for each vehicle 10 model years or older retained in a wrecker's junkyard for more than one year.[17]

3. A uniform, statewide procedure[18] for the identification and disposal of abandoned motor vehicles, includ-

their useful life." A. 55A. In its 1968 Report, the Committee reaffirmed its position "that the wrecker should be persuaded to move vehicles in to the scrap cycle as rapidly as possible" and "move vehicles to scrap processors within a reasonable length of time." A. 53A.]

[15] I.e., "an establishment having facilities for processing iron, steel and nonferrous scrap metal and whose principal product is scrap iron, steel and nonferrous scrap for resmelting purposes only." Section 5-201.1(a) (A. 17A).

[16] I.e., those "engaged in the business of purchasing or otherwise acquiring vehicles for the benefit of the materials contained therein or the parts thereof". Section 5-201(b) (A. 17A).

[17] Section 5-203(d) (A. 20A).

[18] "It is the sense of the General Assembly that the provisions of this subtitle shall be uniform throughout the State and shall supersede any local law inconsistent herewith." Section 5-209 (A. 23A).

ing those which are eight years old and totally inoperable.[19]

4. The payment by the Motor Vehicle Administration of Maryland of a statutory bounty for the destruction by licensed scrap processors of each vehicle formerly titled in Maryland.[20]

1. *Licensing and regulation of scrap processors.*

Scrap processors must be licensed by the Administration in order to participate in the disposal of Maryland hulks. By very definition,[21] as used throughout the legislative scheme, a scrap processor is one "which is licensed under the provisions" of Section 5-202. That section prescribes the criteria: the license applicant must conduct its business at a fixed location, provide a storage area sufficient to accommodate at least 25 vehicles to be scrapped, maintain records and books of account in a substantial office, advertise its location to the public and, above all, maintain "a hydraulic baler and shears, or a shredder, or such other equipment suitable for processing motor vehicle scrap" as the Administration may prescribe. Section 5-202 (A. 18A).[22] Each scrap processor's location is open to inspection by a representative of the Administration prior to the issuance of a license. M.A.R.R. §11.02.05.36 (A. 35A). If a license is issued, it must be renewed annually, accompanied by a fee of $100. Section 5-202(6) (A. 18A). In addition, a licensed processor must keep accurate

[19] Section 11-1002.2(f)(5), as it appeared prior to its 1974 amendment, *infra* at 22.

[20] Section 5-205 (A. 22A).

[21] Section 5-201.1(a) (A. 17A).

[22] These statutory requirements are detailed further in administrative regulations, M.A.R.R. §11.02.05.35 et seq. (A. 35A-36A).

and complete records of all transactions for at least three years and these records may be inspected at any time during normal business hours. Section 5-206 (A. 22A-23A), as implemented by M.A.R.R. §11.02.05.43 (A. 35A). The license may be revoked, after notice and hearing, for violation of any statute or regulation promulgated by the Administration. Section 5-601 *et seq.* (A. 23A-24A).

It should be observed that the licensing provisions draw no distinction between scrap processors operating plants located in Maryland and those which do not. All processors, wherever located, are required only to submit to licensing, operate the requisite heavy equipment and "facilities for processing iron, steel, and nonferrous scrap metal", conduct that business "at a fixed location", and maintain "a substantial office in which books of account and records of such business are kept". Sections 5-201.1(a); 5-202(2), (4), (8) (A. 17A-18A). A regulation requires each scrap processor not located in Maryland to maintain an office within the State which has been approved by the Administration. M.A.R.R. §11.02.05.45 (A. 36A). Maryland and non-Maryland processors are licensed on equal terms and, once licensed, stand on the same footing with respect to license fees, government inspection, record-keeping, and procedural requirements.

As a practical matter, the Administration has licensed seven scrap processors, including Alexandria, which operate no facilities located in Maryland. Stipulation ¶9 (A. 58). All seven of them are located in states contiguous to Maryland and function as active participants in the "scrap cycle".[23] As an original

[23] Based upon bounty payments to all scrap processors during the four years ending June 20, 1974, as stipulated, out-of-state processors have processed 23.55% of the automobile hulks. Stipulated table III (A. 66A-67A).

licensee under the statute, Alexandria has satisfied all criteria by maintaining its license continuously and by processing Maryland vehicles acquired pursuant thereto. Stipulation ¶7 (A. 58A). It maintains an office in Silver Spring, Maryland, in compliance with regulations. Stipulation ¶8 (A. 58A). Although licensing has subjected Alexandria to regulatory burdens which did not exist prior to the legislation,[24] these are burdens common to all licensed scrap processors and have not altered Alexandria's methods of operation. Stipulation ¶6 (A. 58A). In short, Alexandria enjoyed the same freedom of competition as it did before, at least prior to the disabling amendment to Section 11-1002.2(f)(5).

2. *Licensing and regulation of wreckers.*

As noted by the Committee on Taxation and Fiscal Matters, the accumulation of motor vehicles in unsightly salvage yards posed serious environmental problems. Because the sale of usable spare parts is the most profitable aspect of the wrecking business, certain wreckers tended to accumulate large numbers of automobile hulks primarily for their inventory of parts (A. 41A-43A). The Maryland legislature addressed this problem in enacting Chapter 556. Indeed, the "underlying purpose" of the legislation, as subsequently declared by the Court of Appeals of Maryland, "was to arrest the problems developing from the storage of old

[24] "Prior to the 1969 enactment, wreckers and scrap processors were subjects of modest regulation under the Motor Vehicle Code, and surely were not part of a comprehensive scheme. Such regulation as did exist was aimed at them almost entirely with respect to the titling and registration of vehicles. In fact, it not only appears that scrap processors had been previously unmentioned by that name, but also they were largely ignored in the original [1969] version of Chapter 556, which dealt mainly with wreckers before the bill was amended [in 1970]." *Administrator v. Vogt*, 267 Md. 660, 667, 299 A.2d 1, 5 (1973).

automobiles, which had become a cause for concern in terms of environmental health." *Administrator v. Vogt*, 267 Md. 660, 670, 299 A.2d 1, 6 (1973).

As part of this purpose, Section 5-201 makes it unlawful after January 1, 1970, "to store any vehicle, or body or chassis thereof, which is to be scrapped, dismantled, or destroyed, on any private property for a period of thirty days" unless a license is obtained from the Administration (A. 17A). A wrecker must be licensed if it is "engaged in the business of purchasing or otherwise acquiring vehicles for the benefit of the materials contained therein or parts thereof." Section 5-201.1(b) (A. 17A). The criteria for licensing, suspension, and revocation parallels that which is applicable to scrap processors,[25] but two regulatory features are directed against wreckers alone. First, a $5.00 assessment is levied upon each 10-year old hulk which is not scrapped within one year after the wrecker acquires it. Section 5-203(d) (A. 20A).[26] Second, "it is unlawful for a wrecker to store vehicles for salvage or demolition at a density of more than 250 vehicles for any one acre". Section 5-208 (A. 23A).

Because salvage yards may accumulate up to 250 vehicles per acre, licensed wreckers are a frequent source of automobile hulks. Most of the hulks delivered to scrap processors may be classified as eight years old

[25] By their express terms, Sections 5-202 (licensing requirements), 5-206 (record-keeping), and 5-601 et seq. (license revocation and suspension) apply to wreckers and scrap processors alike (A. 18A, 22A-24A). See also administrative regulations applicable to wreckers, M.A.R.R. §11.02.05.01, et seq. (A. 30A-34A).

[26] It was this statutory assessment which was at issue in *Administrator v. Vogt, supra.*

and totally inoperable.[27] On the average, this category of hulks accounts for 96% of all vehicles which Alexandria acquires from Maryland sources. Affidavit ¶8 (A. 78). Licensed wreckers delivered 1,934 hulks in that category during the first half of 1974. Affidavit ¶7 and table (A. 77A).

Although licensed wreckers thus constitute one source of supply, they hold only a fraction of the Maryland vehicles available for scrapping. The sale of salvageable parts, rather than the hulk, is the most profitable phase of the wrecking business.[28] Older vehicles have minimal value to wreckers as sources of replacement parts. Appellants' Br. 14, n. 21. Such vehicles are subject to assessment under Section 5-203(d) and count against the 250-per acre maximum.

By legislative definition, licensed wreckers store vehicles for 30 days or more for benefit of their materials and parts. Sections 5-201, 5-202.1(b). They are distinguishable as such from a host of towing services, vehicle haulers, and government agencies which remove vehicles abandoned on the streets and parking lots for immediate disposal, rather than accumulate them for their parts. This category of unlicensed vehicle suppliers is a recognized source of supply to scrap processors. Stipulation ¶12 (A. 59A); Gittelson affidavit ¶7, 11, 13-14 (A. 77A, 79A-81A); Harris affidavit ¶1 (A. 84A).

[27] This is a statutory classification. Sections 5-203(b), 11-1002.2(f)(5). (A. 19A, 29A).

[28] As noted by the Committee on Taxation and Fiscal Matters (A. 41A) and the Court of Appeals of Maryland in *Administrator v. Vogt, supra*, 267 Md. at 669, 299 A.2d at 6.

In Alexandria's experience, these unlicensed suppliers constitute the most important and dependable source of its supply of automobile hulks. During the six-month period prior to July 1, 1974, the effective date of the amendment to Section 11-1002.2(f)(5), Alexandria processed a grand total of 32,648 automobile hulks. Of this total, 14,943 were acquired from Maryland sources and nearly all of these (14,253) were over eight years old and totally inoperable. By delivering 12,319 of such hulks to Alexandria's plant, *unlicensed suppliers thereby accounted for no less than 86.4% of all eight year old and inoperable vehicles delivered from Maryland during that period.* Even more remarkable is the fact that the 12,319 hulks delivered by *unlicensed suppliers* constituted 37.7% of Alexandria's *entire* production during the period. The supply by that source alone was regular and dependable. In every single month during that period, at least one-third of the vehicles processed by Alexandria were Maryland hulks acquired from unlicensed suppliers.[29]

[29] All the statistics and percentages contained in this paragraph are derived from figures in the tables set forth in Affidavit ¶5, 7, and 8 (A. 75A, 77A, 78A). For the Court's convenience, the figures covering the first six months of 1974 are listed below:

Months (1974)	*Total Hulks Processed (All Sources)*	*Hulks From Maryland Sources Only*	*8 Year Old Inoperable Md. Hulks*	*Delivered by Unlicensed Suppliers*
January	4,958	2,528	2,488	2,128
February	4,471	2,290	2,233	1,819
March	6,503	2,541	2,454	2,268
April	6,509	3,422	3,007	2,499
May	5,826	2,335	2,302	2,114
June	4,381	1,827	1,769	1,491
TOTAL:	32,648	14,943	14,253	12,319

The percentages are computed by simple arithmetic, i.e., 12,319 is 37.7% of 32,648, 82.4% of 14,943, and 86.4% of 14,253.

3. *Statutory procedures for vehicle disposal.*

Because "titling of motor vehicles and other legal technicalities" have a recognized tendency to retard the disposal of abandoned cars (A. 42A), the Maryland Legislature authorized five[30] basic methods of transfer:

(1) A vehicle owner or his assignee may endorse a valid Certificate of Title. Section 5-203.1 (A. 20A-21A).

(2) Anyone in possession of an abandoned vehicle may apply to any police department which, after giving prescribed three-week notices, may issue a police Certificate of Authority to deliver the vehicle for scrapping. Section 11-1002.2(f)(1-4) (A. 28A-29A).

(3) The purchaser of an abandoned vehicle at a police department auction may obtain a sales receipt (Auctioneer's Bill of Sale) which permits him to deliver the vehicle for scrapping. Section 11-1002.2(a-d) (A. 25A-27A).

(4) A licensed wrecker may assume ownership of vehicles in his possession, upon compliance with specified procedures, and deliver those vehicles for scrapping pursuant to his wrecker's Certificate of Disposal. Section 5-203(b-c) (A. 19A-20A).

(5) Anyone in possession of an abandoned vehicle may deliver it for scrapping, without documentation, if it is eight years old and totally inoperable. Section 11-1002.2(f)(5) (A. 29A).

The first three methods — Certificate of Title, police Certificate of Authority, and Auctioneer's Bill of Sale — may be treated summarily because, in practice, they are

[30] Appellants list only four methods in text, but mentions the fifth (wreckers certificate of disposal) in a footnote (Br. 6, n.7).

of marginal utility. Vehicles delivered for scrap processing are rarely accompanied either by unencumbered Certificates of Title or by police Certificates of Authority.[31] The latter method is wholly dependent upon local police departments and the willingness of vehicle suppliers to submit to the procedural burdens and three-week delays imposed by statute.[32] In fact, prior to July 1, 1974, the police Certificate of Authority was seldom used by anybody as a method of transferring vehicles to scrap processors. Stipulation ¶16 (A. 60A); Affidavit ¶15 (A. 81A). Nor is it used now.[33] Although the third

[31] Only 352 of the vehicles acquired by Alexandria in 1974 were documented either by Certificates of Title or by Police Certificates of Authority, accounting for less than 2% of all Maryland hulks processed by Alexandria. Affidavit ¶12 and table (A. 80A). The reference to "VR-20" in that table is to the police Certificate of Authority (Form VR-20). See Stipulation ¶15 (A. 60A).

[32] The procedures are set forth in subsections (a), (b), and (f) (1-4) of Section 11-1002.2 (A. 25A-29A). Under subsection (f)(2), an applicant for a police Certificate of Authority must fill out a detailed affidavit and execute an affidavit swearing to its truth. If the police department approves the application, then it is required by subsection (f)(3) to follow the notification procedures set forth in subsections (a) and (b). The applicant must then wait while the police give three weeks notice by registered mail to the last known owner and all known lienholders, as required by subsection (a). If none are known, or if the mailed notice is returned undelivered, subsection (b) requires the police to publish the notice in a local newspaper. Then, if the vehicle is not reclaimed in accordance with subsections (a) and (b), the police are authorized by subsection (f)(4) to issue the requested police Certificate of Authority (assuming, of course, that the applicant is still interested in obtaining the abandoned vehicle in question).

[33] Affidavit ¶15 (A. 81A-82A). During the first six months of 1974, Alexandria acquired a combined total of 173 vehicles under Certificates of Authority (Form VR-20) and Certificates of Title. In the last six months of 1974, that total was merely 179 — a net increase of six vehicles. Affidavit ¶12 and table (A. 80A).

method, the Auctioneer's Bill of Sale, is a somewhat more productive source of automobile hulks, it is limited by the number of vehicles held in police custody and further depends upon the bidding success of those who participate in police auctions. In 1974, less than 8% of the Maryland vehicles acquired by Alexandria were documented by Bills of Sale.[34]

The fourth method, involving a Wrecker's Certificate of Disposal, is of primary importance to licensed wreckers. In brief, it enables a licensed wrecker to acquire a vehicle without obtaining Certificate of Title or a police Certificate of Authority and to assume full ownership, after compliance with subsections (b) and (c) of Section 5-203 (A. 18A-20A). The wrecker retains a multi-copy Certificate of Disposal in his file until he elects to dispose of the vehicle, at which time he assigns the Certificate to a scrap processor permitting the vehicle to be scrapped; another copy is sent to the Administration so as to report that the vehicle is no longer in the wrecker's inventory. Stipulation ¶15 (A. 60A); M.A.R.R. §11.02.05.17-27 (A. 32A-34A). In practice, licensed wreckers utilize the Certificate of Disposal to the virtual exclusion of all other methods of transfer. Affidavit ¶7 (A. 77A). Because licensed wreckers regularly deliver Maryland vehicles to Alexandria's plant, Table in Affidavit ¶7 (A. 77A), the Certificate of Disposal method is encountered with some frequency.[35] However, statutes and regulations expressly restrict its

[34] The column headed "VR-46" in Affidavit ¶12 (A. 80A) refers to vehicles delivered pursuant to the Auctioneer's Bill of Sale (Form VR-46). Stipulation ¶15 (A. 60A). That column lists a total of 1,786 vehicles processed by Alexandria in 1974 which were acquired by Bill of Sale, accounting for 7.4% of the Maryland total for that year.

[35] The "VR-28" figures for 1974 add up to 5,796, indicating that vehicles delivered by licensed wreckers pursuant to Certificates of Disposal represented 24.2% of the total number

use to licensed wreckers. Affidavit ¶7 (A. 77A). The Certificate of Disposal is *not* a method available to the towing services and other unlicensed suppliers which constitute Alexandria's major source of automobile hulks. Affidavit ¶7 (A. 77A).

The fifth and final method available for vehicle disposal is prescribed by Section 11-1002.2(f)(5). Prior to July 1, 1974, when the crucial amendment became effective, it contained the following provisions:

> (5) Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any *abandoned* motor vehicle is found, or any person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public property, may dispose of the motor vehicle to a wrecker or scrap processor *without the title and without notification procedures* of subsections (a) and (b) of this section, *if the motor vehicle is over eight years old and has no engine or is otherwise totally inoperable.*[36]

(23,976) supplied to Alexandria by all methods listed in the table. Table in affidavit ¶12 (A. 80A).

[36] (Italics added). This language is in all respects identical to the first sentence of the current amended version of Section 11-1002.2(f)(5). (A. 29A). First enacted as part of Chapter 556, Laws of Maryland, 1969, it was reenacted without significant change by Chapter 534, Laws of Maryland, 1970; Chapter 502, Laws of Maryland, 1971; Chapter 396, Laws of Maryland, 1972. Chapter 421, Laws of Maryland, 1972, effective July 1, 1972, inserted the words "or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property". The language was unchanged thereafter until Chapter 465, Laws of Maryland, 1974, imposed the critical amendment.

The paramount importance of Section 11-1002.2(f)(5) to licensed scrap processors lies in the italicized phrases. Abandoned vehicles which are over eight years old and have no engine (or are otherwise totally inoperable) form a special category. By definition, these are not operable vehicles, but hulks ready for scrapping. This is the category from which virtually all vehicular scrap metal is derived, accounting for 96% of the total which Alexandria has acquired from Maryland sources.

Section 11-1002.2(f)(5) provides towing services and other unlicensed suppliers with their only expeditious and readily available outlet for hulks which have either been abandoned or which bear no title certificate (or both). Police notification procedures do not apply to the described category. Simple possession of an abandoned hulk[37] is all that is necessary to entitle an unlicensed supplier to dispose of it to a scrap processor. Unlike all other methods, Section 11-1002.2(f)(5) expressly *exempts* this class of old and inoperable hulks from all title and notification requirements, thereby eliminating the main obstacles to vehicle transfer — title deficiencies and notification procedures.

However, it was the elimination of those obstacles which engendered concern among licensed scrap processors, in view of their potential liability for claims arising from the destruction of such exempt hulks. As a matter of practice, scrap processors have required persons delivering hulks, unaccompanied by title certificates, or other documentation, to execute a form of indemnity agreement by which the transferor (a) certified that he had a legal ownership of and authority to deliver the hulk, (b) agreed to indemnify the scrap

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[37] Under Maryland law, abandoned property of this sort belongs to anyone who takes possession of it. *Steinbraker v. Crouse*, 169 Md. 453, 458, 182 Atl. 448, 450 (1936).

processor from all liability for claims arising from its destruction, and (c) warranted compliance with Maryland laws and regulations. Stipulation ¶14 (A. 60A). These indemnity agreements were widely used prior to July 1, 1974, while the provisions of Section 11-1002.2(f)(5) were uniformly available to the suppliers of *all* scrap processors, irrespective of location. Stipulation ¶16, 19 (A. 60A, 61A). Indemnity agreements, as executed by Maryland towing services and other unlicensed suppliers, were sufficient documents of title for abandoned vehicles over eight years old and totally inoperable and were routinely accepted by the Administration. Affidavit ¶8, 11 (A. 79A, 80A). During the first six months of 1974, Alexandria processed 14,253 Maryland vehicles of that description, 11,249 or 78.9% of which were exempt hulks acquired from unlicensed suppliers under indemnity agreements. Table in Affidavit ¶12 (A. 80A).

4. *The Bounty*

As an additional incentive for moving automobile hulks to licensed scrap processors, Section 5-205 authorizes the payment, out of a fund specially earmarked for that purpose,[38] of a fee or "bounty" for the disposal of each abandoned vehicle formerly titled in Maryland. Section 5-205 (A. 22A) provides in pertinent part, as follows:

> The Administration shall pay a fee of sixteen dollars ($16.00) for each vehicle which has been completely destroyed upon presentation by the scrap processor to the Administration of the certificate of title or other acceptible evidence of ownership for a vehicle formerly titled in this State, the manufacturer's serial number or identification plate, satisfactory proof that the vehicle has been completely destroyed and any other information the Administration may deem necessary. * * * The Administration shall disburse this fee in the following manner: eight dollars ($8.00) to a scrap processor and eight dollars ($8.00) to the wrecker conveying ownership of the vehicle to be destroyed to such scrap processor. Scrap processors and wreckers must be licensed under this part to be eligible for this fee. * * *

[38] Section 3-830 requires the Administration to collect $2.00 for each certificate of title, $1.00 of which is used for administering the "bounty" provisions of Section 5-205 plus certain unrelated expenses incurred under Section 11-1002.2(d). These fees are deposited in a special account known as the "Abandoned Vehicles Fund" and held for payment of "bounties" under Section 5-205 (as well as the unrelated expenses). 6 Annotated Code of Maryland, Art. 66½, §3-830 (1970 Repl. Vol., 1975 Cum. Supp.).

When first enacted in 1969, Section 5-205 provided for a $10 fee payable to licensed scrap processors alone.[39] However, the "wrecking industry involved itself in the legislative process", leading to an amendment which required the bounty to be divided equally between licensed processors and wreckers.[40] In 1972 the bounty was raised from $10.00 to $12.00 and in 1973 it was increased to the current $16.00 figure.[41] There have been no further amendments to Section 5-205.

Under this bounty arrangement, upon receiving a vehicle from a licensed wrecker, the scrap processor requires the wrecker to assign ownership by endorsement of the wrecker's Certificate of Disposal. M.A.R.R. §11.02.05.23, .24, .27, .48 (A. 33A-34A, 36A). After destroying the hulk by processing, the scrap processor

[39] Chapter 556, Laws of Maryland, 1969.

[40] *Administrator v. Vogt*, 267 Md. 660, 670, 299 A.2d 1, 6 (1973). The statute was amended by Chapter 534, §1, Laws of Maryland, 1970, to provide wreckers with a $5.00 share of the $10.00 bounty.

[41] Chapter 421, Laws of Maryland, 1972; Chapter 114, Laws of Maryland, 1973. Appellants' Br. 15 n.23.

certifies that fact on the Certificate of Disposal and submits it to the Administration for payment of the $16.00 bounty.[42] The Administration is then required to pay the bounty authorized by Section 5-205 by disbursing $8.00 directly to the wrecker and $8.00 to the processor. M.A.R.R. §11.02.05.51 (A, B). (A. 37A).

While the bounty is divided equally between the licensed wrecker conveying ownership and the licensed scrap processor attending to its destruction, the entire sum is paid to the scrap processor for each vehicle which was acquired from any person other than a licensed wrecker. Towing services and other unlicensed suppliers may also participate in the bounty program. Harris affidavit ¶1 (A. 84A). M.A.R.R. §11.02.05.51(C). (A. 37A). When a vehicle is acquired from an unlicensed supplier under an indemnity agreement, the scrap processor is required to fill out a Certificate of Destruction Form VR-124. M.A.R.R. § 11-02.05.51(C). (A. 37A). That form (A. 39A) contains a brief description of the vehicle, the date of its receipt and destruction, and its Maryland title number. Form VR-124 does *not* indicate the place where the vehicle was abandoned. (A. 39A). The processor submits the executed form to the Administration, together with a copy of the indemnity agreement and the vehicle identification number (VIN) plate. These serve as a request for payment of the $16 bounty authorized by Section 5-205. M.A.R.R. §11.02.05.50, .51(c), .52 (A. 37A); Form VR-124 (A. 39A). Prior to July 1, 1974, when the provisions of Section 11-1002.2(f)(5) were uniformly available to suppliers of all scrap processors, indemnity agreements (used in conjunction with Form VR-124) were routinely accepted

[42] Section 5-204 (A. 21A); M.A.R.R. §11.02.05.24, 49 (A. 33A, 36A). As required by Section 5-205, the processor also forwards the vehicle identification number (VIN) plate of the destroyed vehicle. M.A.R.R. §11.02.05.50 (A. 37A).

by the Administration for bounty payment. Stipulation ¶16 (A. 60A); Affidavit ¶11 (A. 80A).

Although licensed wreckers are entitled to an $8.00 statutory share of the bounty, Section 5-205 makes no express provision for unlicensed suppliers. It is an established practice, however, for scrap processors to rebate a major portion of their $16.00 bounties to unlicensed suppliers of bounty-eligible vehicles, as an incentive for future deliveries. Stipulation ¶12 (A. 59A). In practice, before the amendment to Section 11-1002.2(f)(5), Alexandria rebated $14.00 of each $16.00 bounty payment to its unlicensed suppliers who delivered hulks pursuant to indemnity agreements. Affidavit ¶10 (A. 79A). Although not all unlicensed suppliers requested the bounty rebate, most of Alexandria's regular suppliers of bounty-eligible vehicles expected and did receive it. Affidavit ¶11 (A. 79A-80A). Those suppliers were a steady source of vehicles from Maryland and their indemnity agreements were routinely accepted by the Administration for bounty payments on exempt hulks delivered pursuant to Section 11-1002.2(f)(5). Affidavit ¶5, 11 (A. 75A, 80A).[43] The $14.00 rebate was credited to the supplier upon purchase of the hulk, but payment was withheld until actual receipt of the bounty. Other scrap processors, in competition with Alexandria, paid immediate cash rebates to their suppliers for bounty-eligible vehicles and assumed the risk that the Administration would approve their requests for bounty payments. Affidavit ¶10 (A. 79A).

Because of this customary division of the bounty, scrap processors like Alexandria have promoted the

[43] Indemnity agreements are sufficient title documents only for vehicles over eight years old, totally inoperable, and formerly titled in Maryland and are executed only by unlicensed suppliers which regularly haul from Maryland. Affidavit ¶5, 8. (A. 75A-76A, 78A-79A).

legislative purpose by inducing unlicensed suppliers to deliver their vehicles into the "scrap cycle". Stipulation ¶12 (A. 59A-60A). The destruction of Maryland-titled vehicles bestows economic advantages upon scrap processors, licensed wreckers, and unlicensed suppliers which participate in the bounty program. Stipulation ¶12 (A. 59A).

Despite its unique bounty program, however, Maryland is part of a nationwide scrap market. The market value of automobile hulks is heavily dependent upon the prices steel mills are willing to pay for the scrap, which in turn is influenced by national and international economic conditions over which Maryland has no control. Stipulation ¶11 (A. 59A). In Maryland, as elsewhere, this dependence results in relatively fierce competition among scrap processors for the acquisition of available hulks. Stipulation ¶11 (A. 59A). Because of the bounty program, however, scrap processors can no longer acquire Maryland-titled vehicles by merely paying the prevailing market price for scrap metal. Their suppliers also expect to realize bounty shares or rebates for those vehicles and, in order to remain competitive, scrap processors must be able to assure their payment. Competition for bounty-eligible hulks is intense. Affidavit ¶8 (A. 78A).

In its practical operation, the bounty program operates directly upon commerce in Maryland scrap "by artificially enhancing the value of abandoned vehicle hulks in excess of their natural market price". Appellants' Br. 9. However, only hulks formerly titled in Maryland command this "artificially enhanced value",[44] and then only if delivered to scrap processors

[44] See AJS 8a. Appellants also state that the program has created an "artificial value" for hulks (Br. 15), but this terminology is misleading because it implies that hulks have little or no scrap value. The more apt description, "artificially enhanced value", was used by Appellants in their Memorandum in Support of Motion to Dismiss, at 7 (R. 24, 30).

licensed by the Administration and eligible to participate in Maryland's bounty program. Under Section 5-205, Maryland vehicles earn bounties only when destroyed by processors which hold licenses. This has had a profound effect upon those scrap processors which depend, in whole or in part, on the steady flow of old cars from Maryland sources. When the bounty program was enacted by the Maryland Legislature, those scrap processors were obliged to obtain licenses in order to become eligible to receive and distribute bounty payments. Affidavit ¶9 (A. 79A). This ready acceptance of regulation was not surprising, because a licensed processor receiving bounty payments for the destruction of Maryland-titled vehicles was in a position to pay "artificially enhanced" prices for scrapworthy vehicles which were substantially higher than an unlicensed competitor could offer. Affidavit ¶9 (A. 79A). The ready availability of bounty payments was an immeasurable business advantage for participating scrap processors, especially in times when demand exceeded supply and competition for Maryland hulks was at a peak. Affidavit ¶18 (A. 83A). The ability to offer a bounty-generated rebate (i.e., payment of a higher price without added cost to the processor) imparts a distinct competitive edge to those processors fully able to participate in the bounty program. Affidavit ¶18 (A. 83A).

Under the bounty program as it was structured prior to July 1, 1974, the seven licensed processors operating plants in Virginia and Pennsylvania were active participants and continued to compete with the nine Maryland-based processors on terms of relative equality. These seven out-of-state processors received a collective 23.55% share of all bounty payments, based

upon interstate deliveries of Maryland-titled vehicles to their respective plants. Table III (A. 66-67A), as stipulated ¶13, 17 (A. 60A-61A). Alexandria firmly established itself as the leading purchaser of Maryland hulk exports.[45] As an original participant in the bounty program, Alexandria received $219,084 or 13.73% of all payments under Section 5-205 through September 30, 1974, thereby ranking third among the 16 licensed scrap processors.[46]

Participation in the bounty program has not insured success to all participants. Since the program's inception, 99.1% of all bounties have been paid to only ten licensed processors, including Alexandria and two Pennsylvania-based processors. Stipulation ¶13 and stipulated table VI (A. 60A, 72A). Within Maryland, nine scrap processors are licensed but only five have participated to any extent. Two Baltimore-based processors dominate the entire market for bounty-eligible hulks. Together they have collected $900,587 in bounties, or 56.5% of the overall total paid by the Administration.[47]

[45] During the four-year period ending June 30, 1974, Alexandria received 53.71% of all bounties paid to out-of-state processors as a group. In the last year of that period, Alexandria's share climbed to 72.83% of the out-of-state total. Table IV (A. 68A-69A), as stipulated, ¶13, 17 (A. 60A-61A).

[46] Stipulation ¶13 and stipulated table VI (A. 60A, 72A). Half of Alexandria's four-year total was registered during the first nine months of 1974. Stipulated table I (A. 62A-63A). The figures for July, August, and September of 1974, as shown on stipulated tables I, II, and VI (A. 62A-65A, 72A) do *not* represent bounties paid on vehicles *acquired* or processed in those months. They reflect authorized payments to Alexandria during those months, for vehicles previously destroyed. See Stipulation ¶17 (A. 60A-61A).

[47] Stipulated table VI (A. 72A). One of them, United Iron & Metal Co., Inc., has collected more bounty payments than the other eight *combined*. Stipulated Table V (A. 71A).

D. The 1974 Amendment to Section 11-1002.2(f)(5) and Its Impact

Prior to July 1, 1974, Section 11-1002.2(f)(5) contained no reference to indemnity agreements. As a matter of industry practice, licensed scrap processors required their unlicensed suppliers to execute indemnity agreements before purchasing hulks exempt from title and notification requirements, i.e., abandoned vehicles which are over eight years old and totally inoperable. Stipulation ¶14 (A. 60A). Although such agreements were routinely accepted by the Administration for bounty purposes, Affidavit ¶11 (A. 80A), their validity and enforcibility remained uncertain. Statutory recognition of the existing practice was proposed during the 1974 session of the Maryland Legislature (A. 97A). In its original draft, House Bill 782[48] would have authorized *all* licensed scrap processors to file indemnity agreements with the Administration and receive the full bounty under Section 5-205 for every exempt vehicle acquired and processed in accordance with Section 11-1002.2(f)(5).

What emerged from the Legislature was radically different, both in concept and in terms. Chapter 465, Laws of Maryland, 1974, reenacted the former provisions of Section 11-1002.2(f)(5) and adopted the amend-

[48] House Bill 782 would have repealed and reenacted Section 11-1002.2(f)(5) and added the following language:

> A scrap processor may execute an indemnity agreement that shall be filed with the Motor Vehicle Administration. The indemnity agreement shall contain the name, address and signature of the person delivering the vehicle. The indemnity agreement and the manufacturers serial or identification number shall be satisfactory proof that the vehicle has been destroyed and shall be acceptable for payment of the full bounty authorized by Section 5-205.

Chapter 465, Laws of Maryland, 1974 (A. 16A) incorporates this language, but tacks on significant additions.

ment proposed by House Bill 782, but also inserted new language which curtailed its general application:

> (f)(5) Notwithstanding any other provisions of this section, any person, firm, corporation, or unit of government upon whose property or in whose possession any abandoned motor vehicle is found, or any person being the owner of a motor vehicle whose title certificate is faulty, or destroyed, or any agent designated and authorized by a unit of government to remove an abandoned motor vehicle from public or private property, may dispose of the motor vehicle to a wrecker or scrap processor without the title and without notification procedures of subsections (a) and (b) of this section, if the motor vehicle is over eight years old and has no engine or is otherwise totally inoperable. IN THOSE CASES ONLY, A SCRAP PROCESSOR WHOSE PLANT IS PHYSICALLY LOCATED AND OPERATING IN THIS STATE SHALL [[MAY]] EXECUTE AN INDEMNITY AGREEMENT THAT SHALL BE FILED WITH THE MOTOR VEHICLE ADMINISTRATION. THE INDEMNITY AGREEMENT SHALL CONTAIN THE NAME, ADDRESS AND SIGNATURE OF THE PERSON DELIVERING THE VEHICLE. THE INDEMNITY AGREEMENT AND THE MANUFACTURERS SERIAL OR IDENTIFICATION NUMBER SHALL BE SATISFACTORY PROOF THAT THE VEHICLE HAS BEEN DESTROYED AND SHALL BE ACCEPTABLE FOR PAYMENT OF THE FULL BOUNTY AUTHORIZED BY SECTION 5-205 IF THE VEHICLE IDENTIFIED IN THE INDEMNITY AGREEMENT WAS TITLED IN THIS STATE. OTHERWISE, FOR THE PURPOSE OF ADMINISTERING THE PROVISIONS OF THIS SECTION, THE PROVISIONS OF SECTION 5-205 SHALL NOT APPLY.[49]

[49] Chapter 465, Laws of Maryland, 1974 (A. 15A-16A), sets out the amending language in block capitals and underlines the new matter (not contained in House Bill 782).

These further amendments, as underlined above, were engrafted on the only statute which enables unlicensed suppliers to dispose of vehicles over eight years old and totally inoperable, without the title and without police notification procedures. With respect to that specific category of exempt hulks, a vital source of raw scrap metal, the amendments created a unique statutory classification found nowhere else in the legislative scheme or implementing regulations. Every "scrap processor whose plant is physically located and operating in this State" was required to file an indemnity agreement for each exempt hulk, thereby assuring such processor of statutory indemnity against claims and automatic payment of the full bounty authorized by Section 5-205. Otherwise, the bounty provisions were inapplicable to exempt hulks delivered to any other licensed processor in accordance with the amended statute. "When the Maryland Legislature amended the law in 1974, only scrap processors with plants physically located and operating in Maryland were permitted to obtain inoperable eight year old vehicles, upon which bounties would be paid, if an indemnity agreement was executed in favor of the scrapper." Appellants' Br. 15.

There is no legislative history for the 1974 amendments to Section 11-1002.2(f)(5). (A. 99A). The Administration, by its counsel, has disclaimed any responsibility for the new legislation (A. 98A), depicting it as "an eleventh-hour, in-the-halls handwritten amendment" which "dawned on somebody" (A. 97A), resulting in "a very bad statute in terms of draftsmanship" (A. 99A). However, there is no mystery concerning the object of this lobbying effort or the intended beneficiaries. Chapter 465 was enacted for the declared "purpose of protecting *certain* scrap processors who destroy certain

abandoned motor vehicles by authorizing them to file an indemnity agreement with the Motor Vehicle Administration and relating generally to disposition of abandoned motor vehicles." (A. 15A; italics in original).

Chapter 465 was approved by the Governor on April 30, 1974 (A. 16A) and took effect July 1, 1974. In protecting certain scrap processors, the amended section eliminated all others from effective competition. Old and inoperable hulks continued to fetch an "artificially enhanced value" for their suppliers, but only if delivered intrastate to "a scrap processor whose plant is physically located and operating" in Maryland. Old and inoperable hulks exported for processing in contiguous states were ineligible for bounty and sold at much lower prices prevailing on the free market for scrap metal. For towing services and other unlicensed suppliers, in business for profit and attracted by high prices, transactions with licensed processors beyond Maryland's borders now entailed financial sacrifice. Accordingly, their hulks were withdrawn from interstate commerce and delivered for processing within Maryland for the bounty-generated rebates which only Maryland-based processors could provide. Affidavit ¶15 (A. 82A). The latter obtained indemnity and $16 bounties for each vehicle but, more significantly, secured unhindered access to the domestic supply of vehicular scrap.

This economic power, concentrated in the hands of a tiny and readily-identifiable group of Maryland-based processors, had a magnetic effect on bounty-eligible vehicles. Until the District Court intervened with an injunction some months later (AJS 31a-32a), the predictable impact of this scheme upon Alexandria's business was immediate and drastic. This is reflected in undisputed statistics covering its monthly acquisitions

throughout the calendar year.[50] By comparing subtotals for the first six months of 1974 with those for the six months after July 1, 1974 (when the amended statute took effect), the extent of Alexandria's trade losses comes into clear focus.

1. During the first half of 1974, Alexandria acquired 14,943 vehicles exported from Maryland, which constituted 45.8% of all vehicles delivered to its plant during that period. In the second half of 1974 this number *dropped* to 10,066 and the Maryland share of its total business *declined* to 33.79%.[51]

2. In contrast, there was a consistent, uninterrupted flow of vehicles derived from sources outside of Maryland not subject to that State's legislation. Alexandria received 17,705 vehicles from non-Maryland sources in the first half of 1974, and 19,809 in the second half, for a net *gain* of 11.9%. If the flow of Maryland vehicles had followed the same general pattern, a similar 11.9% increase from 14,943 to 17,782 might have been projected. Instead, the Maryland total *dropped* from 14,943 to 10,066 vehicles for a net *decline* of 32.6% (and thus fell short of the projected figure by 7,716 vehicles).[52]

[50] The methodology employed in compiling and tabulating these statistics was explained, in thorough detail, by Alexandria's general manager. Gittelson affidavit ¶1, 5 (A. 74A-76A). The data is complete through December 31, 1974, and thus includes all statistics which were available on January 20, 1975, when the affidavit was filed (A. 2A).

[51] Table in Affidavit ¶5 (A. 75A). Alexandria processed 32,648 vehicles in the first half of the year and 29,875 in the second half, for a 1974 total of 62,523. Comparable totals for Maryland vehicles were 14,943, 10,066, and 25,009, respectively. Non-Maryland totals, derived by ordinary subtraction, were 17,705, 19,809, and 37,514, respectively.

[52] See n.51 *supra*.

3. Most of this decline was in connection with vehicles over eight years old and totally inoperable delivered from Maryland — the category which Section 11-1002.2(f)(5) exempts from title and notification requirements. Both before and after the statutory amendment, this category accounted for approximately 96% of all vehicles acquired from Maryland sources. Affidavit ¶8 (A. 78A). However, after July 1, 1974, the total *dropped* sharply, from 14,253 hulks in the first half of 1974 to 9,723 in the second half, for a net *decline* of 31.8% in the number of eight year old and inoperable hulks delivered from Maryland. Table in affidavit ¶8 (A. 78A).

4. The amended statute operated directly upon unlicensed suppliers, as distinguished from licensed wreckers which continued to use Certificates of Disposal (Form VR-28), a procedure not affected by the amendment. Affidavit ¶7 (A. 77A). Because licensed wreckers do not depend upon Section 11-1002.2(f)(5), their deliveries actually doubled from 1,934 vehicles in the first half of the year to 4,161 in the second half. Table in affidavit ¶7 (A. 77A).

Even so, this increased volume did not offset Alexandria's loss of Maryland trade with its unlicensed suppliers. Because they are not able to use Certificates of Disposal, unlicensed suppliers depend upon Section 11-1002.2(f)(5) for disposal of exempt hulks over eight years old and totally inoperable. They delivered 12,319 hulks to Alexandria during the first six months of 1974, accounting for 86.4% of its Maryland supplies. During the six months after the amendment took effect, the number *fell* to 5,562, for a net *decline* of 54.9%. Table in affidavit ¶7 (A. 77A). In other words, unlicensed suppliers delivered 6,757 fewer hulks from Maryland during the last six months of 1974 (at a time when licensed wreckers and non-Maryland sources were *increasing* their deliveries to Alexandria).

5. Because Alexandria could no longer receive bounties on the basis of indemnity agreements, its unlicensed suppliers apparently traded with Maryland processors which could. Alexandria received 11,249 exempt hulks pursuant to indemnity agreements in the first half of 1974, but the number *dropped* to 3,817 in the second half — a net *decline* of 7,432 hulks delivered under the indemnity agreement method. Table in affidavit ¶12 (A. 80A).

6. As of July 1, 1974, Alexandria and the other out-of-state processors could receive bounties only by producing a Certificate of Title, a Certificate of Disposal, a police Certificate of Authority, or an Auctioneer's Bill of Sale. Stipulation ¶15 (A. 60A). In order for scrap processors to produce such documents to the Administration, they must first receive such documents from those who supply the vehicles. Unlicensed suppliers are not authorized to use Certificates of Disposal and the other three "alternatives" are obtainable only in limited circumstances. After the 1974 amendment, those three "alternatives" did not increase the flow of hulks to Alexandria and certainly did not compensate it for the substantial loss of indemnity agreement trade:

	Jan-June 1974	*July-Dec. 1974*	*Net Change*
Police Certificates of Authority (VR-20) and Titles	173	179	+ 6
Auctioneer's Bill of Sale (Form VR-46)	1,197	589	—608
TOTALS:[53]	1,370	768	—602

In other words, the same unlicensed suppliers which cut their deliveries to Alexandria under indemnity agreements from 11,249 to 3,817, also saw fit to explore the

[53] Derived by simple addition from table in affidavit ¶12 (A. 80A).

"alternatives" with scrap processors which operate competing plants "physically located" in Maryland.

Alexandria's losses were not confined to bounty receipts. The substantial decline in its Maryland trade in automobile hulks diminished by many thousands of dollars the revenues which it derives from the sale of processed scrap metal to the steel industry. The situation was aggravated further by the irreplaceable loss of established, large-volume suppliers of Maryland hulks. For example, during the three months prior to July 1, 1974 (April, May, and June), Alexandria purchased *1,879* vehicles from an aggregate of eight unlicensed suppliers, who received a bounty-enhanced price for their hulks. The Administration paid $30,064 in bounties for the destruction of those hulks, most of which Alexandria rebated to the eight suppliers. During the next three months (July, August, and September), after the amendment took effect, the same eight suppliers delivered only *27* vehicles. Alexandria received $432 in bounties and rebated most of it to the suppliers. Affidavit ¶13 (A. 81A).[54]

Section 11-1002.2(f)(5), by its express terms, exempts abandoned hulks which are over eight years old and totally inoperable from police notification procedures. In theory, a vehicle supplier could ignore that exemption and initiate such notification procedures in order to obtain a police Certificate of Authority enabling him to

[54] One of those eight unlicensed suppliers, a Maryland-based firm (George Underwood), Harris affidavit ¶6 (A. 85A), delivered *691* bounty-eligible vehicles in interstate commerce from Maryland to Alexandria in May and June, 1974. After the 1974 amendment, that supplier delivered *none* to Alexandria, but instead dealt on an intrastate basis with Joseph Smith & Sons, Inc., a Maryland-based processor competing with Alexandria for automobile hulks originating in the Prince George's — Montgomery County area. Affidavit ¶14 (A. 81A).

dispose of such hulks, for bounty, to an out-of-state processor. Stipulation ¶15 (A. 60). In practice, however, such procedures were seldom, if ever, used in conjunction with that exempt class of hulks and never really considered an alternative to indemnity agreements prior to July 1, 1974, when the provisions of Section 11-1002.2(f)(5) were uniformly available to customers of *all* scrap processors, irrespective of location. Stipulation ¶16 (A. 60A).[55] Although the Administration has so stipulated, it suggested below that the situation has improved because the police in four Maryland counties "are able to complete" the notification procedures "within an average of approximately 72 hours from the filing of the application therefor". Harris affidavit ¶11 (A. 86A).

Unlike an indemnity agreement, however, the Certificate of Authority does not originate with scrap processors and the procedure for obtaining it lies wholly beyond their control. And that procedure is so cumbersome and time-consuming as to discourage its use by vehicle suppliers. In order to obtain a Certificate of Authority, a supplier must apply to a police department and furnish detailed information accompanied by an affidavit certifying to the truth of all material facts. Section 11-1002.2(f)(1-2) (A. 28A). If the police department is satisfied that the application is properly executed and sufficient in its contents, then the police must follow prescribed notification procedures, Section 11-1002.2(f)(3) (A. 28A), including but not limited to dispatching a letter by registered mail to all known owners and lienholders. Section 11-1002.2(a), (b) (A. 25A-26A). While it is entirely possible that the police

[55] Before July 1, 1974, police notification procedures were used rarely and mainly in conjunction with wrecked or abandoned cars which were less than eight years old. Affidavit ¶15 (A. 81A).

"are able to complete" those steps "within an average of approximately 72 hours", Harris affidavit ¶11 (A. 86A), the notice recipients have a statutory right to reclaim the vehicle within *three weeks* which must elapse before the vehicle supplier can obtain the Certificate authorizing its disposal. Section 11-1002.2(a), (f)(4) (A. 25A, 29A).

Section 11-1002.2(f)(5) expressly exempts hulks over eight years old and totally inoperable from these tedious procedures; the 1974 amendment did not affect that exemption. Because vehicle suppliers are *never* required to seek police authority to dispose of that class of hulks, it is unnecessary for them to obtain police certificates. Instead of wasting their time in a pointless exercise, these suppliers have continued to deliver old and inoperable hulks directly to licensed scrap processors, without police intervention or delay (72 hours or otherwise). Because a processor "whose plant is physically located and operating" in Maryland can execute an indemnity agreement which will trigger bounty payments, vehicle suppliers are not likely to deliver their hulks to any other processors.

In an attempt to counter the loss of its Maryland trade to Maryland-based competitiors, Alexandria did explore the use of police Certificates of Authority by its suppliers. After the amendment to Section 11-1002-.02(f)(5), Alexandria was advised by the Administration that suppliers could follow notification procedures to establish their claims to bounty rebates. Alexandria so notified its regular bounty customers, supplied them with forms, explained the necessary procedures, and solicited their continued business. The response was a mass exodus of Alexandria's regular suppliers, who proceeded to trade instead with Maryland scrap processors eligible to collect and distribute bounties by

filing indemnity agreements with the Administration. These suppliers simply went elsewhere so that they could continue to operate as they had in the past. Alexandria was unable to replace these established suppliers with new converts. After expressing interest in bounty rebates, and upon learning of the procedures necessary for obtaining them, these prospective suppliers pursued the subject no further. Affidavit ¶15 (A. 81A-82A). During the last six months of 1974, amid the collapse of its Maryland trade, Alexandria received fewer than 179 vehicles via police Certificates of Authority.[56]

E. The Proceedings Below.

On September 23, 1974, Alexandria brought this action in the United States District Court for the District of Maryland to challenge the validity of the amended version of Section 11-1002.2(f)(5). Its complaint (A. 3A-15A) alleged that the statute, on its face and as applied, burdened and discriminated against interstate commerce and denied equal protection of the laws. Jurisdiction was invoked under 28 U.S.C. §§1331, 1332, and 1343. Named as defendants (now Appellants) were Harry R. Hughes, as Secretary of the Maryland Department of Transportation, and other officials of the Administration charged with the operation and enforcement of the statutory program (A. 4A). Because Alexandria sought an injunction restraining the administration and enforcement of the Maryland statute by those officials, a three-judge court was requested (A. 13, R. 233) and designated pursuant to 28 U.S.C. §§2281 and 2284 (A. 2A, R. 239-41).

[56] In fact, this total includes vehicles documented by Certificates of Title, as well as police Certificates of Authority (VR-20). Table in affidavit ¶12 (A. 80A).

The defendant officials, represented by the Attorney General of Maryland, moved to dismiss the complaint on the ground that it did not raise a substantial federal question (R. 21). Alexandria countered with a motion for a preliminary injunction (A. 2A, R. 223). During the course of the proceedings, the District Judge to whom the case was initially assigned met with counsel and requested that the parties exert every possible effort, prior to hearing by the three-judge court, to reduce all material and relevant facts into stipulations and affidavits (A. 87A). Accordingly, the parties exchanged information and statistical data, following which they entered into a stipulation of facts (A. 57A-73A) accompanied by separate affidavits and exhibits (A. 73A-86A). In this regard, although the Administration already had statutory access to the records of all licensed scrap processors,[57] Alexandria twice invited the defendant officials to examine its records and satisfy themselves as to the accuracy of all information set forth in its affidavit (A. 88A-89A). The issues were thoroughly briefed (A. 94A). All parties understood, prior to hearing, that the case would be presented and argued solely on the facts contained in the stipulation and affidavits (A. 88A-91A).

On February 14, 1975, the case was heard by the designated three-judge panel, which explored with counsel the feasibility of reaching a final adjudication on the basis of stipulated and undisputed facts in the pleadings, stipulation, and affidavits, either by dismissing the action or by granting permanent injunctive relief (A. 92A-94A). In order to expedite the proceedings, all parties agreed to the court's suggestion that the case should proceed, then and there, to a final decision unless it appeared to the court that further evidentiary

[57] Section 5-206 (A. 22A-23A); M.A.R.R. §11.02.05.43 (A. 35A).

hearings were necessary and unavoidable (A. 95A-96A). The case was argued and submitted on that basis (A. 96A-118A).

On March 12, 1975, the court delivered a comprehensive opinion (AJS 1a-31a) and order (AJS 31a-32a), in which it declared Section 11-1002.2(f)(5), as amended, to be invalid under the Commerce Clause, as well as the Equal Protection Clause, and enjoined the defendant officials from restricting the application of that statute to scrap processors "whose plant is physically located and operating in this State", or from otherwise giving force and effect to those words in any manner. On April 25, 1975, the defendant officials noted this appeal from that order. (AJS 32a-33a).

SUMMARY OF ARGUMENT

I. *Commerce Clause.*

Section 11-1002.2(f)(5) is vitally important to commerce in unprocessed scrap metal because it operates directly upon abandoned hulks over eight years old and totally inoperable — the category which describes most of the hulks available for processing into forms acceptable to the steel industry. Maryland formerly encouraged this commerce, by exempting those hulks from police notification and title requirements and by paying bounties for their disposal by processing plants located in and near Maryland. Indeed, her representatives even now proclaim that "the scheme actually promotes commerce by artifically enhancing the value of abandoned vehicle hulks in excess of their natural market price." (Br. 9).

Under the amendment to that statute, however, Maryland has endeavored to subordinate the interstate part of that commerce by directing it to plants "physically located and operating" within her borders.

That amendment had the avowed purpose of protecting the small group of scrap processors located in Maryland which compete with licensed out-of-state processors for the purchase of scrapworthy hulks. In its practical operation the amendment achieves its discriminatory purpose, with the effect "of curtailing the volume of interstate commerce to aid local economic interests." *H. P. Hood & Sons, Inc. v. DuMond,* 336 U.S. 525, 530 (1949). Although it does not expressly require all exempt hulks to be processed in Maryland, *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 142-43 (1970), its necessary tendency is to make it economically disadvantageous for sellers of hulks to export them for processing because of the artificial price differential established by the bounty program. *Polar Ice Cream & Creamery Co. v. Andrews,* 375 U.S. 361 (1964); *Haiilburton Oil Well Cementing Co. v. Reily,* 373 U.S. 64 (1963); *Dean Milk Co. v. City of Madison,* 340 U.S. 349 (1951); *H. P. Hood & Sons, Inc v. DuMond,* 336 U.S. 525 (1949); *Toomer v. Witsell,* 334 U.S. 385 (1948); *Pennsylvania v. West Virginia,* 262 U.S. 553 (1923). In order to compete on equal terms with the protected local interests, Alexandria and other licensed out-of-state processors would be required to relocate their plants to Maryland — a requirement which this Court had declared "to be virtually *per se* illegal". *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 146 (1970); *Halliburton Oil Well Cementing Co. v. Reily,* 373 U.S. 64, 72 (1963); *Toomer v. Witsell,* 334 U.S. 385 (1948). The 1974 amendment is an implicit invitation "to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the Nation." *Baldwin v. G.A.F. Seelig, Inc.,* 294 U.S. 511, 522 (1935); *H. P. Hood & Sons, Inc. v. DuMond,* 336 U.S. 525, 538-39 (1949).

Maryland provides no avenues of escape from the practical effect of its discriminatory amendment.

Because the statute thus amended exempts the hulks from police notification procedures, it is inherently improbable that sellers of hulks will utilize such unnecessary procedures merely to promote the rehabilitation of interstate commerce. By relegating interstate commerce to unprofitable and seldom-used routes, while local business continues to travel the main "avenue", the amendment is indefensible. *H. P. Hood & Sons, Inc. v. DuMond,* 336 U.S. 525, 539-40 (1949). Nor is it justified by any legitimate local interest which could not be as readily secured by reasonable nondiscriminatory alternatives. *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 143 (1970); *Dean Milk Co. v. City of Madison,* 340 U.S. 349, 354 (1951).

II. *Equal Protection Clause.*

A licensed out-of-state scrap processor which has established a Maryland office, opened its facilities and records for inspection by Maryland officials and dealt directly with the Motor Vehicle Administration in Maryland's program for the disposal of abandoned vehicle hulks has thereby established contacts which are sufficient to bring it within Maryland's jurisdiction, insofar as its Maryland-licensed activities are concerned. Assertions that Alexandria is not "within the jurisdiction of the state", or entitled to protections secured by the Equal Protection Clause, are without substance. Alexandria is entitled to have its constitutional rights upheld. *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison,* 301 U.S. 459, 462 (1937).

At a minimum, this Court requires that a statutory classification bear some rational relationship to a legitimate state purpose. *Weber v. Aetna Casualty & Surety Co.,* 406 U.S. 164, 172 (1972). The classification scheme which precludes Alexandria from use of the

expeditious indemnity agreement procedure serves no rational interest related in any way to genuine or legitimate differences between in-state and out-of-state scrap processors or to the purpose behind the Maryland legislation. Four propositions are advanced in support of the statutory discrimination, but Appellants do not (and in fact cannot) relate them in any rational manner to the purposes of the legislative program. Analysis of these purported interests demonstrates clearly that the overriding purpose of the amendment was the exclusion of out-of-state licensed scrap processors (who are otherwise identically situated) from the major portion of the Maryland abandoned vehicle market solely because of their foreign location. *WHYY, Inc. v. Borough of Glassboro,* 393 U.S. 117 (1968). This court cannot uphold discriminations "supported by mere fanciful conjecture", *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison, supra,* 301 U.S. at 462, and "need not in equal protection cases accept at face value assertions of legislative purposes, when an examination of the legislative scheme and its history demonstrates that the asserted purpose could not have been a goal of the legislation." *Weinberger v. Wiesenfeld,* 420 U.S. 636, 648 (1975). This is not a situation of an out-of-state business seeking protection from the hazards of competition within; rather, Maryland is seeking to protect its local businesses from the hazards of competition from without. The discriminatory legislation has, by purposeful and invidious classification, effectively excluded Alexandria from engaging in competition with scrap processors who, except for location, are identically situated in all respects.

III. *The District Court Proceedings.*

Appellants were fully accorded due process in compliance with Rule 56, Federal Rules of Civil

Procedure. Alexandria demonstrated that it was entitled to judgment as a matter of law because the 1974 amendment discriminated unfairly and substantially burdened interstate commerce, without any legitimate rational justification, in violation of the Equal Protection and Commerce Clauses of the Constitution. The absence of a genuine issue as to any material fact is established by stipulation and uncontroverted affidavit. The drastic adverse economic impact of the discriminatory 1974 amendment upon Alexandria and similarly situated non-Maryland scrap processors was fully documented, as was the substantial burden of the amendment on interstate commerce in abandoned vehicle hulks.

Appellants impugn the summary judgment entered below by alleging the existence of factual disputes which had no bearing on the outcome. Their conclusions are misplaced because the contested facts, few in number and minor in their significance, were immaterial to constitutional adjudication. The existence of indemnity agreements specifying the District of Columbia as the origin of certain Maryland-titled abandoned cars is inconsequential in view of the undisputed fact that no statute nor any regulation or practice pursuant thereto disqualifies Maryland-titled cars abandoned outside Maryland from bounty payments. The two instances of mismatch between car and Vehicle Identification Number plate cited by Appellants are equally immaterial to the documented and uncontradicted fact that Alexandria was dramatically damaged by the 1974 amendment. Appellants' unsubstantiated charge that the 1974 amendments might not have substantially burdened interstate commerce is wrong as a matter of fact, logic, and law. Having established that the 1974 amendment was inherently unconstitutional, as con-

firmed by uncontroverted facts of record, the District Court properly enjoined the enforcement of the Statute and correctly entered summary judgment for Alexandria.

ARGUMENT

I. IT IS REPUGNANT TO THE COMMERCE CLAUSE FOR A STATE, IN REGULATING THE DISPOSITION OF VEHICULAR SCRAP METAL, TO PAY BOUNTIES CREATING AN ARTIFICIALLY ENHANCED VALUE FOR SCRAP PROCESSED IN PLANTS "PHYSICALLY LOCATED AND OPERATING" IN THAT STATE, FOR THE PURPOSE OF PROTECTING ITS DOMESTIC PLANTS AGAINST COMPETITION AND WITH THE PRACTICAL EFFECT OF WITHDRAWING FROM INTERSTATE COMMERCE MOST OF THE SCRAP WHICH WAS FORMERLY EXPORTED FOR PROCESSING.

This appeal is from a decision by a court of three federal judges, each drawn from Maryland practice and acquainted with the legislative processes in Annapolis. Those judges evaluated the 1974 amendment to Section 11-1002.2(f)(5), in its legislative context and in the light of this Court's historic interpretations of the Commerce Clause. Their decision was unanimous. By its terms, and in its practical operation (AJS 29a), the 1974 amendment was denounced as being repugnant to the Commerce Clause. The essence of the decision may be captured in one of its sentences (AJS 28a):

> The effect of that amendment is substantially to burden the flow of interstate commerce by promoting the economic advantages of scrap processors with plants in Maryland, who alone, pursuant to that amendment, may receive bounties on inoperable vehicles in excess of eight years of age without any requirement that their suppliers have complied with procedures inevitably consumptive of more time and energy than the filing of an indemnity agreement, and who, as contrasted with processors with only out-of-state plants, are statutorily accorded the immunization against suits by owners or alleged owners of the vehicles to the extent provided by such agreements.

Every word in that statement is documented by the record. Every word save one, "substantially", is unchallenged on this appeal. Rather than confront the holding, Appellants skirt it with a succession of unwarranted generalities and truisms which, if anything, describe the so-called bounty program *before* it was amended. Because they do not address the amendment's purposeful and unconcealed discrimination against scrap exported for processing, it is their unedifying conclusion that the Commerce Clause "is not disturbed by a statutory scheme which promotes commerce among the States." (Br. 24).

Appellants inform this Court that "Alexandria's complaint is really that its bounty receipts have not increased by as much as it would have liked". (Br. 23). Alexandria, they say, is aggrieved because "the 1974 legislation caused is [sic] primary source of bounty revenue to evaporate" (Br. 7) and "that the amended bounty scheme imposed a burden upon its ability to collect bounties". (Br. 8). Appellants maintain that, "until mid-1974, Alexandria had been riding the Maryland gravy train" (Br. 16-17) but that the ride ended when "the Legislature restricted the means by which non-Marylanders could take advantage of Maryland's generosity" and "Maryland's munificence" (Br. 17). There are repeated assertions (Br. 11, 17, 22, 28, 31) that no scrap processor "has a constitutional right to receive price-supportive bounty payments for scrapped motor vehicles." (Br. 17).[58]

[58] Appellants seem to liken Alexandria to the smiling young lady from Niger. See *Corporation Commission of Oklahoma v. Federal Power Commission*, 415 U.S. 961 (1974) (dissenting opinion).

These epigrams do little to promote analysis of the issues actually litigated and resolved below, much less fairly describe the so-called bounty program in its amended context or its practical operation upon trade in scrap metal. Appellants no longer view the bounty as a means to a legitimate end. Rather, they now proclaim the bounty to be an end in itself, justifying any artificial economic barrier to interstate commerce or discrimination against outside competition. But the right which won enforcement in the District Court is not measured by Maryland's "generosity" or "munificence". The right to purchase scrapworthy hulks from Maryland sellers, with or without bounties, is fundamental. What was said of wheat in *Shafer v. Farmers Grain Co.*, 268 U.S. 189, 198-99 (1925), and cotton in *Allenberg Cotton Co. v. Pittman*, 419 U.S. 20, 31 (1974), is equally true of vehicular scrap metal:

> [I]t is a legitimate article of commerce and the subject of dealings that are nationwide. The right to buy it for shipment, and to ship it, in interstate commerce, is not a privilege derived from state laws and which they may fetter with conditions, but is a common right, the regulation of which is committed to Congress and denied to the states by the Commerce Clause of the Constitution.

A. Section 11-1002.2(f)(5), as Amended, Discriminates Against Interstate Commerce in Vehicular Scrap Metal With the Practical Effect of Creating Artificial Economic Barriers to Its Export for Processing.

It is undeniable that raw scrap metal, in the form of automobile hulks, is a recognized commodity of trade. Although the abandonment of hulks creates a local problem, and their removal is a local solution, the disposal of the hulks is the first stage in the "scrap

cycle". Automobile hulks, in their unprocessed state, are not marketable directly to the steel industry. Scrap processors play an indispensable role in the "scrap cycle" by converting the hulks into forms of processed scrap acceptable to the mills. And the "scrap cycle" is but a euphemism for commerce in scrap metal.[59]

In order to discharge this function, scrap processors must acquire hulks by the thousands from willing sellers, wherever located. Like all manufacturing enterprises, scrap processors establish commercial relations without regard to state lines. They depend upon a regional network of regular suppliers to satisfy their endless demands for raw scrap. There "is relatively fierce competition by scrap processors for the acquisition of the available hulks". Stipulation ¶11 (A. 59).

By comprehensive legislation, enacted as an environmental measure under its reserved police powers,[60]

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[59] "* * * [T]he most effective and most practical means [of restoring the scrap cycle] would seem to be to use the scrapping process, which combines profit for industry with conservation of natural resources. From the evidence presented to the Committee, the objective would seem to be to accelerate the movement of the vehicle from the owner who has decided to discard it, to the auto wrecker who salvages parts 'and markets the hulk, to the scrap processor who reduces it to scrap marketable at the mills, and finally to the steel mills which convert it into new usable steel." Maryland Legislative Council Committee on Taxation and Fiscal Matters, 1967 Report 60 (A. 40A-41A). Appellants' Br. 12-13. See *Allenberg Cotton Co. v. Pittman*, 419 U.S. 20, 26 (1974).

[60] *Administrator v. Vogt*, 267 Md. 660, 675, 299 A.2d 1, 9 (1973). In the District Court, Appellants advanced a theory that the legislation was not subject to limitations imposed either by the Commerce or Equal Protection Clauses. Citing *Field v. Barbee Asphalt Paving Co.*, 194 U.S. 618 (1904), and *Atkins v. Kansas*, 191 U.S. 207 (1903), among other authorities, they asserted that Maryland was acting in a business or "proprietary" capacity in arranging for the

Maryland has exerted a large measure of control over the transfer and disposition of scrapworthy hulks abandoned within its boundaries. It prescribes the conditions under which the hulks may be delivered for scrapping. It requires the licensing of scrap processors to whom the hulks may be disposed. It treats any statutory violation as a misdemeanor and as cause for license revocation. Finally, as an integral part of the scheme, Maryland pays a bounty for each hulk destroyed by a licensed processor, upon presentation of the title or its equivalent and satisfactory proof of destruction.

Because Section 5-205 authorizes bounty payments to licensed scrap processors, Appellants insinuate that those processors have "realized a most welcome source of revenues" flowing from "Maryland's generosity" and "munificence" (Br. 16, 17). In fact, bounties are distributed primarily to those who sell the hulks to processors. As a matter of practice, which has Maryland encouraged (and which competition necessitates), most of the bounties are rebated to Maryland suppliers as incentives for future deliveries; this division of the bounty promotes the legislative purpose of inducing them to move their hulks into the "scrap cycle". Stipulation ¶12 (A. 59A-60A).

Maryland is part of a nationwide scrap market, but is the only State with a bounty program or similar arrangement (Br. 17). This program puts Maryland in a unique economic position to direct the flow of hulks

disposal of scrap metal and in paying bounties to private enterprises in furtherance of the legislative goals. That issue was thoroughly briefed and argued below. The District Court rejected Appellants' contentions for reasons stated in its opinion (AJS 15a-17a, 27a-28a). Appellants have not resurrected that issue on appeal, either in their jurisdictional statement or their brief on the merits. Because that issue has been abandoned, we do not address it further.

within its borders. On one hand, the market price of hulks is subject to wide and erratic fluctuations, depending upon the cyclical state of the steel industry. Thus the prevailing price "is influenced by national and international economic conditions over which Maryland has no control." Stipulation ¶11 (A. 59A). On the other hand, the bounty program inflates Maryland scrap prices by artificially enhancing the value of hulks in excess of the prevailing market price. The bounty is *not* a price support or stabilizer. It is an amount fixed by statute and is payable whether the market price rises or falls. It is a fixed price *supplement*, enabling all sellers of Maryland hulks to command higher prices at all times, good or bad, than would be obtainable in the free marketplace — provided that they sell only to licensed scrap processors under procedures which trigger payment of the bounty.

The bounty gives this commerce its direction, by pointing it to those scrap processors which Maryland has franchised by license. Section 11-1002.2(f)(5) expedites the flow of that commerce by exempting most hulks from two requirements (title certificates and police notification procedures) which would otherwise retard or obstruct the free movement to processing plants. Operating in direct conjunction with the bounty program, Section 11-1002.2(f)(5) enables the largest class of vehicle sellers (including towing services and everyone else) to deliver the most scrapworthy variety of hulks (abandoned vehicles over eight years old and totally inoperable) to licensed scrap processors, immediately and without title certificates or police notification procedures.

The legislation operates directly upon commerce in automobile hulks and controls their disposition for scrap processing. Appellants concede this, proclaiming at

every turn[61] that "the scheme actually promotes commerce by artificially enhancing the value of abandoned vehicle hulks in excess of their natural market price." (Br. 9). Prior to the 1974 amendment, Maryland did not attempt to retain this commerce within its borders. It issued licenses to scrap processors operating plants in contiguous states, presumably in recognition of the interstate dimensions of the commerce which it sought to promote. Most of the hulks exported from Maryland for processing were in the exempt category and thus commanded the same artifically-enhanced value as those delivered to domestic processors. The local supply of that commodity remained an object of competition by scrap processors, giving Maryland vehicle suppliers a regional choice of outlets able to pay bounty-enhanced prices.

By its terms and necessary operation, however, the 1974 amendment to Section 11-1002.2(f)(5) eliminated this freedom of choice. It preserved the exemption from title and notification requirements, but abolished the bounty for hulks delivered to processing plants outside Maryland. In contrast to the broad legislative aims of the original program, the 1974 amendment was enacted for the avowed "purpose of protecting *certain* scrap

[61] E.g., "the Maryland bounty program creates an artificial value for automobile hulks which encourages their expeditious delivery to scrap processors." Br. 15. "The bounty program actually *promotes* interstate commerce * * *." Br. 18. (Italics in original). "* * * Maryland is trying to put as much scrap into the stream of 21. "In fact, the Maryland scheme furthers interstate commerce * * * one of the aims of the legislation". Br. 21. "Indeed, it is Appellants' contention that the Maryland bounty program is a boon to interstate commerce * * *. The program, since its institution, has unquestionably led to more scrap metal being placed in the flow of commerce then [sic] was the case before its enactment." (Br. 38).

processors who destroy certain motor vehicles by authorizing *them* to file an indemnity agreement" (A. 15A) which would be "acceptable for payment of the full bounty authorized by Section 5-205" (A. 16A). The statute, as amended, carefully identified on its face those whom it was "protecting" — i.e., each and every "scrap processor whose plant is physically located and operating in this State". Since only nine scrap processors met this definitive criteria, a fact well recognized before the Maryland Legislature acted, *Administrator v. Vogt,* 267 Md. 660, 675, 299 A.2d 1, 9 n.3 (1973), and because only five Maryland processors had ever participated in the program to any significant degree, stipulated table VI (A. 72A), the protected beneficiaries were virtually hand-picked. And their monopoly on exempt hulks was assured because, unless they destroyed the hulks, "the [bounty] provisions of Section 5-205 shall not apply." (A. 16A).[62]

Nor can it be assumed that the discrimination thus practiced was an accident of statutory draftsmanship. It can hardly be supposed that the Legislature was unaware of the interstate attributes of the "scrap cycle", as described by its own committee reports, or of the fact that the plants of seven of the 16 licensed processors are located in Virginia or Pennsylvania. Otherwise, the amendment would have been a mindless exercise altogether. Its purpose was transparently clear: to protect a handful of scrap processors with plants "physically located and operating" in Maryland against outside competition.

[62] There seems to be little or no disagreement on this point. "When the Maryland Legislature amended the law in 1974, only scrap processors with plants physically located and operating in Maryland were permitted to obtain inoperable eight year old vehicles, upon which bounties would be paid, if an indemnity agreement was executed in favor of the scrapper." Appellants' Br. 15.

By removing non-Maryland scrap processors from the bounty program, the amendment did not merely divest them of statutory rights or privileges enjoyed continuously since the program's inception. More than that, it denied them competitive access to Maryland's primary source of raw scrap metal. Within its borders, hulks in the exempt class retained their "artificially enhanced value" because Maryland continued to pay bounties for their destruction by domestic processors. The same hulks, if exported from Maryland for processing, however, were stripped of that added value and only commanded the lower prices prevailing in the free market for scrap. In the scrap metal business, as in any other, sellers go where prices are highest. Maryland continued to generate artificially-enhanced prices through bounty payments, but now required its sellers to trade with domestic scrap processors in order to obtain them. These sellers were not prohibited by the express terms of the law from delivering their hulks in interstate commerce to outside scrap processors. They were prohibited by the law of practical economics, which visits a financial sacrifice upon all who disobey.

Appellants insist that Maryland may manipulate bounty payments as it sees fit because no scrap processor is entitled to receive them as a matter of constitutional right (Br. 11, 17, 22, 28, 31). "At best", they say, "Alexandria is only *entitled* to reap whatever benefit it can derive from the free marketplace." (Br. 22) (italics in original). The right to compete in a free marketplace, with its attendant benefits and risks, is precisely what this case is all about.[63] If Maryland may

[63] The contemporary health of the marketplace, when Maryland amended its program, is described in Wellemeyer, "For Scrapmen, These Are Tinsel Days", FORTUNE 150 (Aug. 1974), *infra* at 107.

withdraw from "the free marketplace", and create an artificially enhanced market of its own for the sole enjoyment of domestic scrap processors, then we have truly returned to the reign of the Articles of Confederation. However, "[t]he Commerce Clause created the nationwide area of free trade essential to this country's economic welfare by removing state lines as impediments to intercourse between the states." *Memphis Steam Laundry Cleaner, Inc. v. Stone,* 342 U.S. 389, 395 (1952). And that Clause makes it a "certainty" that Alexandria "will have free access to every market in the Nation", including Maryland's. *Allenberg Cotton Co. v. Pittman,* 419 U.S. 20, 32 (1974); *H. P. Hood & Sons, Inc. v. DuMond,* 336 U.S. 525, 539 (1949). As one of the 13 original signatories to the Constitution, Maryland may not detach herself from "the free marketplace". "This principle that our economic unit is the Nation * * * has as its corollary that the states are not separable economic units." *H. P. Hood & Sons, Inc. v. DuMond,* 336 U.S. 525, 537-538 (1949).

In fact, Maryland disavows any attempt to retain for itself the available local supply of automobile hulks. See *Toomer v. Witsell,* 334 U.S. 385, 404-06 (1948); *Foster-Fountain Packing Co. v. Haydel,* 278 U.S. 1, 13 (1928). Indeed, its policy is to rid itself of these hulks by getting them into the "scrap cycle". By licensing scrap processors on either side of her borders, and by paying bounties for hulks removed to processing plants for destruction, Maryland formerly encouraged and sanctioned this commerce. *Toomer v. Witsell,* 334 U.S. 385, 405 (1948); *Pennsylvania v. West Virginia,* 262 U.S. 553, 597 (1923). Even now, her representatives maintain that "the Maryland scheme furthers interstate commerce" and that "Maryland is trying to put as much scrap into the stream of interstate commerce as her limited resources will allow." (Br. 21).

Under the amendment, however, Maryland released only *processed* scrap into the stream of interstate commerce, in direct competition with scrap processed elsewhere. By making *unprocessed* scrap exports unprofitable, it fastened its grip on the *hulks* and stimulated their movement to processing plants "physically located and operating in this State". Maryland did not conserve "her limited resources", but reallocated them to subsidize the domestic processing of scrap. Bounties were paid at an undiminished rate because most of the hulks were processed within its borders. Local scrap processing would thrive commercially under such a preferential scheme, if not enjoined, "but to the same extent the commerce of the Nation would suffer discrimination." *Best & Co. v. Maxwell,* 311 U.S. 454, 457 (1940).

Maryland clearly may not preempt the local supply of automobile hulks or accord to its scrap processors a preferred right of purchase over outsiders. This Court has "held that when a state recognizes an article to be a subject of commerce, it cannot prohibit it from being a subject of interstate commerce; that the right to engage in interstate commerce is not the gift of a state, and that a state cannot regulate or restrain it." *H. P. Hood & Sons, Inc. v. DuMond,* 336 U.S. 525, 535 (1949).[64]

The District Court held that the 1974 amendment imposed a substantial and unjustified burden on

[64] "Much of the business is interstate and has grown up through a course of years. West Virginia encouraged and sanctioned the development of that part of the business and has profited greatly by it. Her present effort, rightly understood, is to subordinate that part to the local business within her borders. In other words, it is in effect an attempt to regulate the interstate business to the advantage of the local consumers. But this she may not do." *Pennsylvania v. West Virginia,* 262 U.S. 553, 597-98 (1923). See *Toomer v. Witsell,* 334 U.S. 385, 403-404 (1948); *Foster-Fountain Packing Co. v. Haydel,* 278 U.S. 1, 13 (1928).

interstate commerce by promoting the economic advantages of scrap processors with plants in Maryland and that its practical effect was "rather predictable and almost inevitable". AJS 28a, 29a. This appeal seeks to revive Maryland's "eleventh-hour, in-the-halls handwritten amendment" (A. 97A) on the ground that it "(affects interstate commerce only incidentally and remotely), *Shafer v. Farmers Grain Co.,* 268 U.S. 189, 199 (1925)." (Appellants' Br. 23). Appellants fault the District Court's analysis of the Commerce Clause as "simply upsidedown" (Br. 18), and, on the basis of their own capsulated summaries of this Court's precedents (Br. 18-21), advance a singular hypothesis: "State statutes which have been held unconstitutional as violative of the Commerce Clause have all had one feature in common: they have *prohibited* some form or facet of interstate commerce, either by precluding such commerce outright, or by placing such a heavy burden upon some aspect of commerce that, in effect, it could not be conducted." (Br. 18; italics in original).

We submit that the decisions cited by Appellants,[65] as well as the ones which they overlook,[66] refute their

[65] *Pike v. Bruce Church, Inc.,* 397 U.S. 137 (1970); *Polar Ice Cream & Creamery Co. v. Andrews,* 375 U.S. 361 (1964); *Dean Milk Co. v. City of Madison,* 340 U.S. 349 (1951); *H. P. Hood & Sons, Inc. v. DuMond,* 336 U.S. 525 (1949); *Toomer v. Witsell,* 334 U.S. 385 (1948); *Baldwin v. G.A.F. Seelig, Inc.,* 294 U.S. 511 (1935); *Foster-Fountain Packing Co. v. Haydel,* 278 U.S. 1 (1928); *Shafer v. Farmers' Grain Co.,* 268 U.S. 189 (1925); *Pennsylvania v. West Virginia,* 262 U.S. 553 (1923).

[66] See e.g., *Halliburton Oil Well Cementing Co. v. Reily,* 373 U.S. 64 (1963); *West Point Wholesale Grocery Co. v. City of Opelika,* 354 U.S. 390 (1957); *Memphis Steam Laundry Cleaner, Inc. v. Stone,* 342 U.S. 389 (1952); *Nippert v. City of Richmond,* 327 U.S. 466 (1946); *Best & Co. v. Maxwell,* 311 U.S. 454 (1940); *Hale v. Bimco Trading Co.,* 306 U.S. 375 (1939); *Lemke v. Farmers' Grain Co.,* 258 U.S. 50 (1922).

central thesis that interstate commerce may be retarded or hindered if it is not brought to a complete standstill. Occasionally, of course, this Court has encountered measures which, if enforced, would have prevented trade from being conducted. However, it has also dealt with laws attempting to protect local industry from out-of-state competition by subjecting exports or imports to economic disadvantages. These laws too have fallen under the Commerce Clause, not because they prevented interstate trade, but because they discriminated against it.

The amendment to Section 11-1002.2(f)(5) is discriminatory on its face. It was enacted for the declared "purpose of protecting certain scrap processors" whose plants are "physically located and operating in this State". Its major object was to confer upon them clearly-stated economic advantages in the purchase of scrap — advantages which are expressly denied to their licensed competitors whose plants are located in contiguous states. Because Section 11-1002.2(f)(5) operates directly upon the category of hulks which forms the bulk of trade in scrap metal, the argument (based on *Shafer*) that it "affects interstate commerce only incidentally or remotely" is answered by *Shafer* itself:

> Only by disregarding the nature of this business and neglecting important features of the act can it be said to affect interstate commerce only incidentally and remotely. That it is designed to reach and cover buying for interstate shipment is not only plain but conceded.

Shafer v. Farmers' Grain Co., 268 U.S. 189, 200 (1925).

Maryland has proclaimed in its amendment that "only a scrap processor whose plant is physically located and operating in this State" shall be protected in competing for this category of hulks. By the very

terms of that instrument, Maryland has preempted the most lucrative segment of its raw scrap market for its domestic processors. *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 377 (1964). This is a prohibition or exclusion on its face. The "incidental" or "indirect" burden argument loses all force "where a state artlessly discloses an avowed purpose to discriminate against interstate goods." *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951).

> Nice distinctions have been made at times between direct and indirect burdens. They are irrelevant when the avowed purpose of the obstruction, as well as its necessary tendency, is to suppress or mitigate the consequences of competition between the states. Such an obstruction is direct by the very terms of the hypothesis.

Baldwin v. G.A.F. Seelig, Inc., 294 U.S. 511, 522 (1935). See *Hale v. Bimco Trading Co.*, 306 U.S. 375, 380-81 (1939) (declared purpose of protecting domestic cement industry from "unfair competition" held to be "a rather candid admission that the very purpose of the statute is to keep out foreign goods"). *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 374 (1964); *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 530-31 (1949).

Even if the Maryland Legislature had concealed its discriminatory purpose, its amendment of Section 11-1002.2(f)(5) would be no less vulnerable under the Commerce Clause. The test is "whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce". *Best & Co. v. Maxwell*, 311 U.S. 454, 456 (1940). See *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 69 (1963); *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951); *Brimmer v. Rebman*, 138 U.S. 78, 82 (1891).

> The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, *the actual effect of which is to discriminate in favor of intrastate businesses, whatever may be the ostensible reach of the language.*

Best & Co. v. Maxwell, supra at 457 (italics added).[67]

Maryland's statutory payment of bounties for all scrap which is processed in local plants, while denying payment for scrap exported for processing, may be a novel form of discrimination. Relatively few cases have arisen involving schematic methods of withholding raw materials from export in order to stimulate local manufacturing or processing of those materials. See, e.g., *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970); *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525 (1949); *Toomer v. Witsell*, 334 U.S. 385 (1948); *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1 (1928); *Shafer v. Farmers' Grain Co.*, 268 U.S. 189 (1925); *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923); *Lemke v. Farmers' Grain Co.*, 258 U.S. 50 (1922).[68] Maryland's bounty system, being unique, is without precedent in this Court. But the discriminatory aspect, introduced by the amendment to Section 11-1002.2(f)(5), is not immunized by its novelty. "The Commerce Clause forbids discrimination, whether forthright or ingenious." *Best & Co. v. Maxwell*, 311 U.S. 454, 455 (1940).

[67] "Price security, we are told, is only a special form of sanitary security; the economic motive is secondary and subordinate; the state intervenes to make its inhabitants healthy, and not to make them rich. On that assumption we are asked to say that intervention will be upheld as a valid exercise by the State of its internal police power, *though there is an incidental obstruction to commerce between one state and another. This would be to eat up the rule under the guise of an exception.* * * * Let such an exception be admitted, and all that a state will have to do in times of stress and strain is to say that its farmers and merchants and workmen must be protected against competition from without, lest they go upon the poor relief lists or perish altogether. To give entrance to that excuse would be to invite a speedy end of our national solidarity." *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523 (1935) (italics added). See *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 374 (1964); *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 532 (1949).

What is controlling here is not the means by which Maryland has chosen to discriminate, but the practical effect of that discrimination upon interstate commerce. The amendment does not expressly require all exempt hulks to be processed in the State, *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142-43 (1970), but the artifically enhanced price differential which the amendment does establish is calculated to achieve that result. As the District Court noted, that amendment constitutes the means to an end which "is rather predictable and almost inevitable". AJS 29a. Alexandria's experience confirms that actuality.

It is the economic realities of the situation which are dispositive since "equality for the purposes of competition and the flow of commerce is measured in dollars and cents, not legal abstractions". *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 70 (1963). Although the amendment to Section 11-1002.2(f)(5) provides ostensible loopholes for unprofitable interstate commerce, it has "removed any *economic* incentive" to engage in such commerce. *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 376 (1964). "In other words, it is in effect an attempt to regulate the interstate business to the advantage of the local consum-

[68] "As most states serve their own interests best by sending their produce to market, the cases in which this Court has been obliged to deal with prohibitions or limitations by states upon exports of articles of commerce are not numerous." *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 535 (1949).

ers" of raw scrap. *Pennsylvania v. West Virginia*, 262 U.S. 553, 597-98 (1923). It imposes "*economic* restraints on interstate commerce for local *economic* advantage", *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 535 (1949), and "would neutralize the *economic* consequences of free trade among the states". *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 526 (1935). "While the inequality in question may have been an accident of statutory drafting, it does in fact strike at a significant segment of *economic activity* and carries *economic effects* of a type proscribed by many previous cases." *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 72 (1963) (all italics added).

The artful schemes which have been devised to place interstate commerce at a competitive disadvantages are infinite in their variety. The authors of such schemes, while advancing good and sufficient reasons for promoting them, have invariably denied any purpose to place interstate commerce at a disadvantage. "This Court consistently has rebuffed attempts of states to advance their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state," *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 535 (1949), as well as attempts "to impose an artificial rigidity on the economic pattern of the industry." *Toomer v. Witsell*, 334 U.S. 385, 403-04 (1948). While the states may employ a variety of means to attain legitimate safety and welfare goals, the Commerce Clause imposes well-recognized disabilities. States may not adopt schemes for the avowed purpose or with the practical effect "of curtailing the volume of interstate commerce to aid local economic interest",[69] or "erecting an economic barrier protecting a major

[69] *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 530-31 (1949).

local industry against competition from without",[70] or discriminating against interstate commerce[71] "by providing a direct commercial advantage to local business",[72] or engaging in "discrimination in favor of intrastate businesses",[73] or extending preferential treatment and special exemptions thereto,[74] or attempting to reserve a substantial share of the local market for local businesses,[75] or protecting local industry from out-of-state competition,[76] or attempting to place domestic

[70] *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951). See *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 535, 538 (1949); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523, 527 (1935).

[71] *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 72 (1963); *West Point Wholesale Grocery Co. v. City of Opelika*, 354 U.S. 390, 392 (1957); *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U.S. 389, 395 (1952); *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951); *Best & Co. v. Maxwell*, 311 U.S. 454, 496 (1940); *Pennsylvania v. West Virginia*, 262 U.S. 553, 596 (1923); *Bethlehem Motor Corp. v. Flynt*, 256 U.S. 421, 427 (1921); *Brimmer v. Rebman*, 138 U.S. 78, 82 (1891).

[72] *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 458 (1959).

[73] *Best & Co. v. Maxwell*, 311 U.S. 454, 457 (1940). See, *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 72 (1963); *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U.S. 389, 392 (1952).

[74] *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 74 (1963); *West Point Wholesale Grocery Co. v. City of Opelika*, 354 U.S. 390, 392 (1957).

[75] *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 375-77 (1964); *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951); *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 535 (1949); *Pennsylvania v. West Virginia*, 262 U.S. 553, 598 (1923).

[76] *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 377, 379 (1964); *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 531, 538 (1949); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 522-23 (1935).

markets in a position of "economic isolation",[77] or creating a preferential trade area,[78] or requiring that certain kinds of processing be done in the home state before shipment out of it,[79] or insuring that local demands are satisfied before a commodity may be bought or sold in interstate commerce,[80] or manipulating prices or profit margins "to suppress or mitigate the consequences of competition",[81] or granting to local industry "a preferred right of purchase" over outside buyers.[82]

Maryland has arrogated to itself the power of creating an artificial, anti-competitive price differential between scrap retained within its borders and scrap moving in interstate commerce to non-Maryland processors. "Such a power, if exerted, will set a barrier

[77] *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 527 (1935). See *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 377 (1964); *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951); *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 538 (1949).

[78] *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 356 (1951). See, *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 377 (1964); *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 72 (1963).

[79] *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 147 (1970); *Toomer v. Witsell*, 334 U.S. 385, 403-04 (1948); *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1, 13 (1928).

[80] *Pennsylvania v. West Virginia*, 262 U.S. 553, 596 (1923). See *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 536 (1949); *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1, 10-11 (1928).

[81] *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 522 (1935). See *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 379 (1964); *Lemke v. Farmers' Grain Co.*, 258 U.S., 59 (1922).

[82] *Pennsylvania v. West Virginia*, 262 U.S. 553, 595 (1923). See *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 535-36 (1949).

to traffic between one state and another as effective as if customs duties, equal to the price differential, had been laid upon the thing transported". *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521 (1935). *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 373 (1964); *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 532 (1949); *Lemke v. Farmers' Grain Co.*, 258 U.S. 50, 59 (1922) (striking down "a system which enables state officials to fix the profit which may be made in dealing with a subject of interstate commerce"). By engendering artificial price differentials, the amendment to Section 11-1002.2(f)(5) can only diminish the flow of unprocessed scrap from Maryland to out-of-state processors. "Its provisions and the conditions which must surround its operation are such that it necessarily and directly will compel the diversion to local consumers of a large and increasing part of the [scrap] heretofore and now going to consumers in the [neighboring] states, and therefore will work a serious interference with that commerce". *Pennsylvania v. West Virginia*, 262 U.S. 553, 597 (1923) (bracked words added).

This form of price manipulation is all the more reprehensible because it exalts the mere fact of instate location over all other considerations. The benefits of Section 11-1002.2(f)(5), as amended, are reserved for those "whose plant is physically located and operating in this State". In order to share these benefits, on equal terms, it would be necessary for scrap processors to establish a plant on Maryland soil, together with "their extraordinarily expensive equipment which the statute requires them to maintain",[83] and begin "operating" there. Apart from the manifest burdens of forced relocation, it is difficult to perceive how relocation

[83] *Administrator v. Vogt*, 267 Md. 660, 675, 299 A.2d 1, 9 (1973).

across the Potomac River would either improve the efficiency of Alexandria's business or enhance Maryland's ability to promote the welfare, safety, and environmental health of its citizens.

By its focus upon in-state plant location, the 1974 amendment is offensive to the Commerce Clause precisely because it is an incentive to locate within Maryland and build expensive new facilities there in order to avoid or mitigate the consequences of discrimination. *Halliburton Oil Well Cementing Co. v. Reily,* 373 U.S. 64, 72 (1963). Legislation which in its practical operation requires that certain kinds of processing be performed in the home state before shipment in interstate commerce has been consistently invalidated under the Commerce Clause. *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 142-43 (1970); *Toomer v. Witsell,* 334 U.S. 385, 403-04 (1948); *Best & Co. v. Maxwell,* 311 U.S. 454, 456 (1940); *Foster-Fountain Packing Co. v. Haydel,* 278 U.S. 1 (1928). Discrimination in favor of local industry necessarily "encourages an out-of-state operator to become a resident in order to compete on equal terms". *Halliburton Oil Well Cementing Co. v. Reily,* 373 U.S. 64, 72 (1963).

In *Pike v. Bruce Church, Inc.,* 397 U.S. 137 (1970), this Court proclaimed an end to parochial nonsense of the sort exemplified by the amendment to Section 11-1002.2(f)(5):

> The nature of that [relocation] burden is, constitutionally, more significant than its extent. For the Court has viewed with particular suspicion state statutes requiring business operations to be performed in the home state that could more efficiently be performed elsewhere. *Even where the state is pursuing a clearly legitimate local interest, this particular burden on commerce has been declared to be virtually per se illegal.*

Id, 146 (Italics added).

When a state attempts to promote the economic welfare of industry located within its borders, by guarding it against nonresident competition, "the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the Nation". *Baldwin v. G.A.F. Seelig, Inc.,* 294 U.S. 511, 522 (1935). See *Polar Ice Cream & Creamery Co. v. Andrews,* 375 U.S. 361, 374 (1964). If Maryland can control scrap within its borders by a bounty which artificially enhances the value of the hulks, what is to prevent Virginia from retaliating with a bounty of its own which would deny Maryland scrap processors access to Virginia sources of scrap metal.[84] Or what about Pennsylvania, with its powerful complex of steel mills? In retaliation for Maryland's treatment of the six Pennsylvania licensees, the Commonwealth of Pennsylvania might find it expedient to pay subsidies to those steel mills which consume only Pennsylvania-processed scrap until the supply has been exhausted, thereby depriving Maryland scrap processors of a convenient and indispensible market for their products.

The potential for interstate mischief would be infinite, unless the Commerce Clause is effective to prevent it.

> The material success that has come to inhabitants of the states which make up this federal free trade unit has been the most impressive in the

[84] Indeed, Appellants *invite* such retaliation: "If Alexandria believes that price-supportive bounty payments are essential to its survival, its proper redress is * * * with the legislature * * * sitting in Richmond, Virginia, and not that body which deliberates in Annapolis, Maryland. * * * Surely the Commonwealth of Virginia is in a position to establish its own bounty program if it so desires and * * * provide the relief which Alexandria would have." (Br. 32-33). Appellants seem to forget that it is Congress, and not the State legislatures, which may regulate interstate commerce.

history of commerce, but the established interdependence of the states only emphasizes the necessity of protecting interstate movement of goods against local burdens and repressions. *We need only consider the consequences if each of the few states that produce copper, lead, high-grade iron ore, timber, cotton, oil or gas should decree that industries located in that state shall have priority.* What fantastic rivalries and dislocations and reprisals would ensue if such practices were begun! *Or suppose that the field of discrimination and retaliation be industry. May Michigan provide that automobiles cannot be taken out of that State until local dealers' demands are fully met?* Would she not have every argument in favor of such a statute that can be offered in support of New York's limiting sales of milk for out-of-state shipment to protect the economic interests of her competing dealers and local consumers? Could Ohio then pounce upon the rubber-tire industry, on which she has a substantial grip, to retaliate for Michigan's auto monopoly?

H. P. Hood & Sons, Inc. v. DuMond, 336 U.S. 525, 538-39 (1949) (italics added).

B. THE EXISTENCE OF LIMITED ALTERNATIVE METHODS FOR DISPOSAL OF VEHICULAR SCRAP METAL DOES NOT MITIGATE THE DISCRIMINATORY EFFECTS OF THE AMENDMENT TO SECTION 11-1002.2(f)(5).

Appellants contend that the situation is not so bleak for non-Maryland scrap processors, notwithstanding the manifest discrimination practiced against them by Section 11-1002.2(f)(5), as amended. The thrust of their position is that Maryland has only restricted the *means* by which those scrap processors may obtain bounty payments. Other methods are said to be open to them which, if utilized, would assure unlimited competition with domestic scrap processors. (Br. 16, 17, 23, 28, 31).

These revelations, if true, merit attention. In order to facilitate consideration of Appellants' position, we set forth *verbatim* the entire catalogue of their assertions:

> * * * The program allows Alexandria, or any licensed non-Maryland scrap processor, *unlimited* participation in the bounty program. * * * (Br. 9; italics added).
>
> Of course, non-Maryland scrappers may still receive bounties for these vehicles as long as they are documented *in some permissible fashion other than by indemnity agreement.* (Br. 15 n.24; italics added).
>
> * * * Under the Maryland bounty program, non-Maryland scrappers, including Alexandria, may not obtain bounties by the execution of indemnity agreements, *although all other methods are available to them.* * * * (Br. 16; italics added).
>
> * * * In 1974 the Legislature *restricted the means* by which non-Marylanders could take advantage of Maryland's generosity. * * * (Br. 17; italics added).
>
> * * * [T]he Legislature has not limited the extent of Alexandria's participation in the program, *but only the means by which it may partake of the benefits.* * * * (Br. 31; italics added).
>
> * * * It should not be overlooked that, even today, Alexandria can participate in Maryland's program to an *unlimited* extent, *as long as it follows the avenues open to non-Maryland scrappers.* * * * (Br. 23; italics added).
>
> * * * [T]he effect of the Maryland law as amended is *merely to limit the means* by which scrap processors who do not operate plants located in Maryland may obtain hulks eligible for bounty payments. *Only the indemnity agreement avenue is closed to non-Maryland scrappers. Other methods of acquisition remain available for use by all scrappers.* * * * (Br. 28; italics added).

> Alexandria not only asserts that it has a right to participate in Maryland's program, *but also claims that it can do so on its own terms.* In fact, it is the State of Maryland which is distributing the benefits involved, and which has broad latitude to determine the extent, and the recipients, of the bounties, *as well as the means by which the payments will be made.* (Br. 28; italics added).

Of course, most of this is sheer rhetoric, devoid of substance, unsupported by the record, and plainly contradicted by the very statutes which Appellants administer. It is noteworthy that these adroitly-contrived assertions fail to describe the "means", "methods" or "avenues" open to non-Maryland scrap processors in order to assure their "unlimited" participation in the bounty program. Not one statutory citation shores up these propositions, which the District Court exposed as fallacious. AJS 28a-30a. We have also treated the subject, *supra* at pp. 19-22, 37-41.

The unspoken premise is that non-Maryland scrap processors may still obtain payment of bounties by presenting title certificates or police certificates of authority for the vehicles destroyed. That much is true, but the difficulty lies in the fact that these documents are unobtainable by scrap processors, except to the extent that they are provided by those who deliver the hulks for scrapping. If a hulk is accompanied by a title or police certificate, the scrap processor may buy it. If not, however, the scrap processor must reject the hulk — unless it is an abandoned vehicle over eight years old, without engine, or otherwise totally inoperable. Section 11-1002.2(f)(5) exempts those hulks from title and police certificate requirements and permits their immediate transfer for processing. It is that statute which embraces the overwhelming volume of trade in automobile hulks (96% of the Maryland hulks acquired

by Alexandria are over eight years old and totally inoperable). It is that statute which is now closed to out-of-state processors, insofar as the bounty program is concerned.

In other words, Maryland vehicle suppliers of exempt hulks described by Section 11-1002.2(f)(5) are afforded three choices under the amendment: (1) They may deliver such a hulk to a Maryland scrap processor for bounty, upon execution of an indemnity agreement at the processing plant, and receive an artificially-enhanced value paid in excess of market value. (2) They may deliver the hulk to a non-Maryland processor, without bounty, and receive market value only. (3) If they have a certificate of title, or if they have obtained a police certificate authorizing disposal of the hulk, they may deliver it to a non-Maryland processor, for bounty, and receive artificially-enhanced value in excess of market value.

Appellants suggest that this third option provides the solution, if incomplete, to Alexandria's problems engendered by the 1974 amendment. They simply ignore what everyone else seems to understand. First, abandoned, inoperable hulks without engines are rarely, if ever, accompanied by properly-endorsed title certificates. Section 11-1002.2(f)(5), by its express terms, presupposes that the title certificate "is faulty or destroyed" and authorizes disposal of the hulk "without the title". Second, no scrap processor can reasonably expect its suppliers to apply to a Maryland police department, wait an average of three *days* (A. 86A) pending police approval of the application and written notice to putative claimants, and then wait three *weeks* more until the statutory notice expires.[85] Section 11-

[85] Section 11-1002.2(a) and (b), as incorporated by reference in Section 11-1002.2(f)(3). See n.32, *supra* at p. 20.

1002.2(f)(5) expressly exempts hulks from these burdensome procedures. No amount of pleading by Alexandria (A. 81A-82A) is likely to persuade suppliers to ignore that exemption and initiate procedures which are wholly unnecessary. Vehicle sellers are no more inclined to waste their time than they are to overlook a profit. "Since the choice between the simple expedient of executing an indemnity agreement and those of the more time-consuming notice procedures will in many, if not all, instances be made by individuals with no interest in maintaining Alexandria Scrap's economic health and a considerable interest in maintaining their own economic health, the choice which will in most instances be made is rather predictable and almost inevitable." AJS 29a.

Appellants do not address this conclusion. Under their theory, interstate commerce in scrap would be licensed by Maryland police departments (if at all), in their discretion and subject to lengthy quarantine, whereas no such burdens would be imposed upon scrap delivered to plants "physically located and operating" in Maryland. That this manifest discrimination is repugnant to the Commerce Clause surely requires no further citation of authority.

Finally, even if the closing of Section 11-1002.2(f)(5) to out-of-state processors merely diminished the volume of interstate trade, that would not immunize it from the Commerce Clause. In *H. P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525 (1949), for example, the out-of-state processor continued to export milk from New York under two previously-issued licenses after a third license had been denied. This prompted New York to argue (as Maryland does here), that the processor could continue to export milk under its existing licenses and even increase its supplies, without condition or limit in

quantity. *Id*, 539. This Court, observing that "a buyer has to buy where there is a willing seller," found that denial of a third license would limit access to additional supplies sought by the processor. *Id*, 540. It held that New York's attempt "to *limit* the local facilities for purchase of additional milk so as to withhold milk from *export*", *id*, 531, was "imposed for the avowed purpose and with the practical effect of curtailing the *volume* of interstate commerce to aid local economic interests", *id*, 530-31 (italics added). See *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 537-38 (1964).

The 1974 amendment to Section 11-1002.2(f)(5) is not rescued from invalidity merely because less convenient methods theoretically may be used by Maryland suppliers to export their hulks from Maryland in reduced quantities. That Appellants would relegate interstate commerce to secondary or seldom-used routes, while local business continues to travel the main "avenue", constitutes a rather telling admission that the amendment is a calculated discrimination, "leading inescapably to the suppression so intended." *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 527 (1935).

C. The Amendment to Section 11-1002.2(f)(5) Was Properly Invalidated, in View of the Absence of Compelling Justification for the Discrimination Against Interstate Commerce and the Plain Existence of Reasonable Non-Discriminatory Alternatives.

In view of the direct conflict between the Commerce Clause and Section 11-1002.2(f)(5), as amended, only a strong showing of adequate justification could suffice to preserve the latter. *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 71 (1963). The formulation declared in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), provides:

> If a *legitimate* local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the *nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.*

Id. 143 (italics added). Discrimination cannot be justified by plausible generalities. There must be a demonstrable nexus between the asserted local interest and the requisite necessity for employing discriminatory means to protect such interest. See, e.g., *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 524 (1935). To permit Maryland "to adopt a regulation not *essential* for the protection of local [environmental] interests and placing a discriminatory burden on interstate commerce would invite a multiplication of preferential trade areas destructive of the very purpose of the Commerce Clause". *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 356 (1951) (italics added).

The question, then, is whether there is a legitimate local interest to be protected by the discrimination and whether it could be promoted by alternative means with a lesser impact upon interstate commerce. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 143 (1970); *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951). No answer is forthcoming from Appellants. In the District Court, they failed to offer any satisfactory reasons for the discrimination but did tender two untenable excuses: "*viz.*, (i) to help limit the payment of bounty monies to Maryland vehicles abandoned in Maryland, and (ii) to insure that those companies which receive a bounty on the basis of an indemnity agreement are fully subject to the laws of Maryland and available to the judicial processes of her courts".[86] However, during the course of

[86] Memorandum in Support of Motion to Dismiss (R. 42).

oral argument (A. 96A-115A), these two assumptions paled under scrutiny. In its opinion, the District Court declared that "neither of those two interests are in any rational manner advanced by the 1974 amendment" (AJS 19a) and elaborated its reasons in detail (AJS 19a-22a).

On this appeal, these two assumptions are not seriously advanced, but merely stated (Br. 29), along with two new "reasons" not suggested below. Because Appellants do not deem any of those points, new or old, to be worthy of consideration in the context of the Commerce Clause, neither do we. Suffice it to say that those points bear scant relation to the avowed and practical discrimination practiced under the 1974 amendment. The wholesale exclusion of licensed and law-abiding scrap processors from the protections of Section 11-1002.2(f)(5), as amended, solely because their plants are not "physically located and operating" in Maryland, is an unconstitutional solution to any problem, real or imagined, which might be suggested by Appellants. In matters affecting interstate commerce, Maryland may not wield her power in blunderbuss fashion.

That much was established in *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935):

> [T]he evils springing from uncared-for cattle must be remedied by measures of repression more direct and certain than the creation of a parity of prices between New York and other states. Appropriate certificates may be exacted from farmers in Vermont and elsewhere; milk may be excluded if necessary safeguards have been omitted; *but commerce between the states is burdened unduly when one state regulates by indirection the prices to be paid to the producers in another*, in the faith that augmentation of prices will lift up the level of

> economic welfare, and that this will stimulate the observance of sanitary requirements in the preparation of the product. * * * *Whatever relation there may be between earnings and sanitation is too remote and indirect to justify obstructions to the normal flow of commerce in its movement between the states.*

Id, 524 (italics added). See *Polar Ice Cream & Creamery Co. v. Andrews,* 375 U.S. 361, 374 n.9 (1964); *Toomer v. Witsell,* 334 U.S. 385, 406 (1948).

The message is plain, lucid, and now firmly embedded in our constitutional law: a state cannot discriminate against interstate commerce, "even in the exercise of its unquestioned power to protect the health and safety of its people, *if reasonable nondiscriminatory alternatives,* adequate to conserve legitimate local interests, are available". *Dean Milk Co. v. City of Madison,* 340 U.S. 349, 354 (1951) (italics added). See *Halliburton Oil Well Cementing Co. v. Reily,* 373 U.S. 64, 71, 73 n.7, 74 n.9 (1963); *Polar Ice Cream & Creamery Co. v. Andrews,* 375 U.S. 361, 375 n.9 (1964). Such alternatives are available to Maryland, but it has failed to employ them.[87] Because Maryland chose instead to discriminate against interstate commerce in unprocessed scrap, its legislative instrument was properly invalidated under the Commerce Clause.

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[87] For example, the mere amendment of Section 5-205 of the present statute, so as to limit the payment of bounties to vehicles abandoned in Maryland (and thereby close the loophole now open to local processors), would have satisfied both the asserted objectives of the State and the Commerce Clause of the Constitution. AJS 30a-31a. See *Halliburton Oil Well Cementing Co. v. Reily,* 373 U.S. 64, 74 n.9 (1963).

II. THE EQUAL PROTECTION CLAUSE FORBIDS A STATE, HAVING LICENSED ALL SCRAP PROCESSORS MEETING PRESCRIBED CRITERIA, TO ASSERT A DISCRIMINATORY PREFERENCE IN FAVOR OF LICENSEES WITH PLANTS "PHYSICALLY LOCATED AND OPERATING" WITHIN ITS BORDERS AND TO DENY TO LICENSEES SIMILARLY SITUATED IN EVERY RESPECT (OTHER THAN PLANT LOCATION) THE RIGHT TO COMPETE WITH THE FAVORED CLASS ON EQUAL TERMS.

The provisions of Section 11-1002.2(f)(5), as amended, creating a state-sanctioned indemnity agreement and affording an expeditious method of qualifying for bounty payments, work an invidious and heavy-handed discrimination against licensed scrap processors with out-of-state processing facilities. Even when viewed from a sympathetic perspective, the amending legislation makes a classification which is unrelated either to differences between instate and out-of-state processors or to the avowed purpose of the statutory program. It is patently arbitrary and is grounded upon no rational basis. Such a discrimination is odious to the Equal Protection Clause.

The three-judge District Court ruled that Section 11-1002.2(f)(5) violated the Equal Protection Clause because it "creates a classification which has no basis in reason". 391 F. Supp. at 58 (AJS. 22a). Appellants now challenge this ruling on two grounds. They assert that the District Court erred in determining that the Equal Protection Clause was infringed by the 1974 amendment. Additionally, and for the first time, they suggest that Alexandria, as a non-Maryland corporation, is not entitled to the equal protection of its laws.

A. An Out-Of-State Scrap Processor Meeting Prescribed Criteria and Becoming Licensed by a State is "Within the Jurisdiction of the State" and Cannot be Denied the Benefits of the Equal Protection Clause In Connection with the Business for which It Was Licensed.

Insofar as Alexandria's entitlement to the benefits of the Equal Protection Clause is concerned, Appellants' contentions are frivolous. Maryland's regulatory scheme for licensing of scrap processors makes specific provision for the licensing of scrap processors not geographically located within the State. MARR § 11.02.05.45 (A. 36A). It is stipulated that Alexandria has been licensed as a scrap processor since the inception of the program and that it is in full compliance with MARR § 11.02.05.45 by maintaining an office in Silver Spring, Maryland (A. 58A). Admittedly, a state may impose preconditions upon the licensing of foreign corporations or even exclude them from licensing altogether; but once it has licensed them, foreign corporations stand on the same constitutional footing under the Equal Protection Clause as the state's own domestic corporations. *WHYY, Inc. v. Borough of Glassboro*, 393 U.S. 117, 119 (1968); *Wheeling Steel Corp. v. Glander*, 337 U.S. 562, 571 (1949); *Hanover Fire Ins. Co. v. Harding*, 272 U.S. 494, 507 (1926).

In the present instance, the Motor Vehicle Administration of Maryland has issued licenses to Alexandria and six other scrap processors not located in Maryland. It is inconceivable that Maryland could establish a scheme with specific provision for licensing non-domestic corporations, issue licenses to such corporations and transact business with them, require such corporations to maintain offices within the state, deal

with such corporations directly over a period of years for purposes of regulation, inspection, and supervision, and then assert for the first time on this appeal that the foreign corporations thus licensed are not "within its jurisdiction".

Appellants' reliance upon *Blake v. McClung*, 172 U.S. 239 (1898), to support the concept that Alexandria is not "within the jurisdiction" of Maryland, is misplaced. Shortly after that portion of the Court's opinion quoted by Appellants (Br. 24-25), Mr. Justice Harlan explained that the foreign corporation in question did not appear "to have been doing business in Tennessee under the statute here involved, or under any statute that would bring it directly under the jurisdiction of the courts of Tennessee by service of process on its officers or agents". *Id.* 172 U.S. at 261. This contrasts directly with the establishment by Alexandria, pursuant to M.A.R.R. § 11.02.05.45, of an office in Maryland which specifically brings it within Maryland's jurisdiction. *Md. Ann. Code* (1974) Cts. & Jud. Proc. Art., § 6-102(a).[88] In fact, the only purpose of requiring out-of-state scrap processors to maintain such offices would seem to be for the purpose of establishing Maryland's jurisdiction over them. By licensing foreign corporations as scrap processors, Maryland has brought them within its jurisdiction and must afford them equal protection in the conduct of that business. *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison*, 301 U.S. 459, 462 (1937). Maryland cannot now deny Alexandria, in its

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[88] §6-102(a) provides that "[a] court may exercise personal jurisdiction as to any cause of action over a person . . . served with process in . . . or who maintains his place of business in the state". Additionally, the District Court below found Alexandria within the reach of the Maryland "long arm" statute, *Md. Ann Code* (1974), Cts. & Jud. Proc. Art. §6-103(b)(1). (AJS. 20a).

status as a licensed scrap processor, the constitutional benefits to which it is entitled.[89]

B. Once a State has Licensed All Scrap Processors Meeting Prescribed Criteria, the Equal Protection Clause Bars the State from Asserting a Discriminatory Preference in Favor of Licensees with Plants "Physically Located and Operating" Within its Borders and Denying its Licensees Similarly Situated in every Respect (Other than Plant Location) the Right to Compete With the Favored Class On Equal Terms.

Section 11-1002.2(f)(5) divides licensed scrap processors into two classes. The line of demarcation is drawn at the Maryland State line. Those licensed processors whose processing plants are located within the state may acquire eight year old inoperable vehicles from virtually anybody through an expeditious procedure. Those licensees whose plants are not so situated are denied that procedure.[90] The District Court rightly found that this classification scheme could not withstand Alexandria's equal protection challenge.

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[89] Cf., *Bethlehem Motors Corp. v. Flynt*, 256 U.S. 421 (1921), where this Court ruled that, if the foreign corporation was doing business within the state, it was entitled to the protections of the Equal Protection Clause to save it from a discriminatory tax scheme but, even if it was not doing business within the State, it was entitled to protection under the Commerce Clause from the same discrimination.

[90] The District Court below also pointed out that the 1974 Amendment would deny out-of-state processors the statutory protections for claims of owners or alleged owners provided by indemnity agreements even if such indemnity agreements were obtained (AJS. 15a).

This Court has prescribed two principles for the examination of statutes in the light of the Equal Protection Clause. First, "distinctions in the treatment of business entities engaged in the same business activity may be justified by genuinely different characteristics of the business involved . . . [b]ut distinctions cannot be so justified if the 'discrimination has no reasonable relation to these differences'. *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison,* 301 U.S. 459, 463". *Morey v. Doud,* 354 U.S. 457, 466 (1957). Second, "[a] classification . . . must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Royster Guano Co. v. Virginia,* 253 U.S. 412, 415". *Reed v. Reed,* 404 U.S. 71, 76 (1971). " 'Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision.' *Louisville Gas & Elec. Co. v. Coleman,* 277 U.S. 32, 37-38; *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison,* 301 U.S. 459, 462." *Morey v. Doud, supra,* 354 U.S. at 464. In addition, "this Court requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose." *Weber v. Aetna Cas. & Sur. Co.,* 406 U.S. 164, 172 (1972). See, *United States Department of Agriculture v. Moreno,* 413 U.S. 528, 533 (1973). However, "[t]his Court need not in equal protection cases accept at face value assertions of legislative purposes, when an examination of the legislative scheme and its history demonstrates that the asserted purpose could not have been a goal of the legislation." *Weinberger v. Wiesenfeld,* 420 U.S. 636, 648 n.16 (1975).

Maryland has deemed that the most efficient way to rid its territory of abandoned vehicle hulks is to

encourage their recycling by heavy industry. A special class of licensed scrap processors was commissioned to accomplish this task. The regulatory agency, the Motor Vehicle Administration, has enlisted out-of-state processors to effectuate the legislative purpose. Although the state may, without running afoul of the Equal Protection Clause, impose unequal burdens on a foreign corporation's ability to partake of the state's benefits, that same Clause prohibits discriminatory action once a state has extended that privilege.[91]

That there is no genuine difference in the operations or businesses of out-of-state and in-state licensed scrap processors is self-evident from the Administration's own regulations (A. 35A-38A). Those regulations uniformly require licensed processors to maintain an office and records at a fixed location,[92] and to be equipped with approved apparatus capable of rendering scrap acceptable to any smelting operation.[93] The procedures through which each licensed processor receives automobile hulks and applies for the bounty are also uniformly applicable to all licensed processors.[94] It is not possible, therefore, to base the distinction made in Section 11-1002.2(f)(5), as amended, on any difference in the character of the business engaged in by licensed processors. This should be contrasted with *Administrator v. Vogt*, 267 Md. 660, 299 A.2d 1, 9 (1973), where the very real differences between the automobile wrecking business and the business of scrap processing were discussed.

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[91] See discussion *supra*, at 80-82.

[92] *M.A.R.R.* §§11.02.05.41-.43 (A. 35A).

[93] *M.A.R.R.* §11.02.05.44 (A. 36A).

[94] *M.A.R.R.* §§11.02.05.47-.54 (A. 36A-38A).

Nor can the discrimination made be logically connected with any permissible legislative purpose.[95] Section 11-1002.2(f)(5), as amended, is part of a comprehensive scheme implemented under Maryland's police power to expedite the removal of automobile hulks in accordance with the legislature's belief that those objects constituted a health and safety hazard. *Administrator v. Vogt, supra.* Although the efforts of the basic legislation in this regard are laudable, they are in no sense promoted by irrational discrimination. During the entire course of these proceedings Appellants have advanced no rationale sufficient to support the statutory discrimination contained in the 1974 amendment.

The Attorney General seems to feel that no rational explanation is required to justify the discriminatory amendment; a mere listing of four theoretical reasons is all that is deemed necessary (Br. 29). "But the mere recitation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme". *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 (1975). No satisfactory and reasonable explanation is forthcoming for the simple reason that none exists. The proffered justifications are untenable.

Before the District Court, Maryland relied upon two justifications for the invidious discrimination against scrap processors with out-of-state facilities: "*Viz.*, (1) to help limit the payment of bounty monies to Maryland vehicles abandoned in Maryland, and (2) to insure that those companies which receive a bounty on the basis of

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[95] A legislative purpose to exclude interstate commerce or to impose restrictions on interstate travel is clearly impermissible. *E.g., Shapiro v. Thompson*, 394 U.S. 618 (1969).

an indemnity agreement are fully subject to the laws of Maryland and available to the judicial processes of her courts".[96] (AJS. 19a). Appellants now put forward two additional justifications: that the classification insures that the indemnity agreement is enforceable and that it tends to limit the amount of money which Maryland would be obligated to pay out of its limited resources to non-taxpayers (Br. 29). These two points were *not* raised below. Even assuming their propriety, however, none of these interests are advanced in any rational manner by Section 11-1002.2(f)(5), as amended.

The contention that the statutory scheme tends to insure that bounty payments will be made only on automobiles abandoned in Maryland is completely unsupported in the record. In the first place, Appellants have offered no factual support for their dual assumptions that (1) non-resident processors are more likely than Maryland processors to claim bounties for vehicles abandoned in places outside Maryland or that, (2) if such a problem exists, it has reached such significant proportions as to warrant the discontinuance of all bounty payments to the former without imposing controls on the latter.[97] In addition, the statute manifests absolutely no public policy to "limit the payment of bounty moneys to Maryland vehicles

[96] Memorandum in Support of Motion to Dismiss (R. 42).

[97] Obviously, even if isolated abuses of the bounty program may be attributed to scrap processors, local or non-resident, "this problem is addressed to the matter of administrative enforcement rather than discriminatory legislation". *Administrator, Motor Vehicle Administration v. Vogt, supra,* 267 Md. at 675-76, 299 A.2d at 9. Only a statistically-significant disparity between the groups could qualify discrimination of the sort attempted here.

abandoned in Maryland".[98] A careful examination of the entire legislative program does not disclose any such limitation, express or implied. While the provisions of Section 11-1002.2(f)(5), as amended, (and Section 5-205) do insist that the vehicle must have been formerly titled in Maryland in order to qualify for the bounty, this is hardly the equivalent of the statutory command to restrict bounties to vehicles abandoned on Maryland territory.[99]

It seems perfectly ridiculous for the Appellants to defend the amendment on the ground that discrimination is essential to vindicate a policy which neither the Maryland legislature nor the Administration has seen fit to adopt. As matters now stand, vehicles abandoned outside of Maryland may be delivered with indemnity agreements for bounty to Maryland processors, but not to their licensed out-of-state competitors.[100] The net

[98] During argument below, the Assistant Attorney General admitted "that the statute does not specifically provide that vehicles must have been abandoned in Maryland in order to qualify for the bounty" (A. 96A).

[99] During the hearing before the District Court the following discussion occurred between the Assistant Attorney General and the Court (A. 102A):

> (Mr. Garrett) I think the Legislature only intended that we clean up the streets of Maryland.
> (Judge Miller) But that is not what the statute says.
> (Mr. Garrett) No it doesn't, and it would be better that it did say that . . . .

[100] There was considerable colloquy below between the Court and the Assistant Attorney General regarding the scope and purpose of Section 11-1002.2(f)(5), as amended (A. 96A-115A). After admitting that an in-state processor could recover the bounty on a vehicle recovered outside of Maryland (A. 99A), the Administrator's counsel suggested that, were it not for this litigation, he would issue a "formal Opinion" advising the Motor Vehicle Administration "that they should refuse to pay a bounty on any vehicle abandoned

effect of this apparent loophole is to perpetuate the discrimination in favor of local processors which now, more than ever, are free (from outside competition as well as from statutory restraint) to pursue and acquire Maryland vehicles abandoned in other states and receive full bounty for doing so. It would even be possible under the present statute for a processor "whose plant is located and operating" in Maryland and which operates one or more plants located elsewhere to claim bounties for Maryland-titled vehicles abandoned outside Maryland and delivered to a non-Maryland plant.

The original situs of an abandoned car bears no rational relation to the location of the processing plant to which it is delivered. Time and distance and competition and value, not state lines, determine where the hulk will be delivered for processing. Whatever reasons may have existed for closing a perceived loophole to non-resident processors, no attempt has been made to demonstrate what purpose was served by preserving the same loophole intact for the benefit of Maryland processors similarly situated.[101] If the claimed evil really existed at all, the exclusion of non-resident processors from the benefits of Section 11-1002.2(f)(5), as amended, is an unconstitutional solution.

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outside of the State of Maryland" (A. 100A). He admitted that there was no such regulation presently in existence and that the indemnity agreements used by in-state processors do not show the origin of the cars (A. 100A).

[101] If this "loophole" was indeed a matter of real concern to Maryland, then it certainly would have moved to cut off the loophole from in-state processors as well as from those out-of-state; its failure to do so implies, in fact, an intention to discriminate invidiously against out-of-state processors. Cf. *Halliburton Oil Well Cementing Co. v. Reily*, 373 U.S. 64, 71 (1963).

The second proposition, i.e. that the 1974 amendment would insure that bounty recipients are fully subject to the laws of Maryland and amendable to its judicial process, is specious. The fact that Alexandria's principal place of business is outside the territorial limits of the state neither lessens the administrative and judicial control which Maryland may assert over those enterprises which she licenses, nor increases the state's burden of enforcing the regulatory scheme. The validity of the state's right to inspect the premises and the records of licensed scrap processors, wherever located, is not questioned. As a condition precedent to licensing, Alexandria and other non-resident processors have been obliged to establish offices in Maryland, to comply with comprehensive regulations promulgated by the Administration, to maintain accurate and complete records, and to submit to inspection by the Maryland authorities.[102] These processors are fully subject to the laws of Maryland and to its judicial processees to the same extent as local processors as to all transactions for which they are licensed.[103] Any attempt to relate the challenged legislation to jurisdiction over bounty recipients is thus clearly irrational.

For the first time, Appellants now raise as a third purported justification that Section 11-1002.2(f)(5), as amended, insures that indemnity agreements will be enforceable. This proposition is wholly incomprehensible. An indemnity agreement is a contract between a

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[102] See, e.g., Sections 5-202(4) (A. 18A), 5-206 (A. 22A) and *M. A. R. R.* §11.02.05.45 (A. 36A). At oral argument below, the Assistant Attorney General admitted that the amendment had nothing to do with inspecting the facilities of out-of-state processor (A. 108A). See opinion of the District Court (AJS. 22a).

[103] See discussion *supra*, at 80-82.

scrap processor and the processor's supplier. In it the supplier states that he has legal ownership of the vehicle and is authorized to deliver it to the processor, that he will indemnify the processor from any liability arising from its destruction, and that he warrants compliance with the Maryland law in the sale of the subject vehicle to the processor.[104] The indemnity agreement is plainly a contract *for the benefit of the scrap processor.* The location of his plant, whether inside or outside of Maryland, has no relevance to the agreement's enforceability.[105] All licensed scrap processors are amenable to Maryland's jurisdiction for purposes of judicial process.[106] This assures that Maryland citizens claiming injury through the destruction of hulks, may obtain judicial relief against scrap processors in Maryland courts. Whether an out-of-state processor might, in turn, have recourse against his supplier for breach of an indemnity agreement, however, has no rational relation to any asserted purpose of the Maryland legislation. Since Section 11-1002.2(f)(5) requires Maryland processors to file their indemnity agreements with the Motor Vehicle Administration, the same requirement, if extended to non-Maryland processors, would obviously eliminate any question of enforceability.

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[104] Stipulation ¶14 (A. 60A). Sample of the indemnity agreement may be found in the record as exhibits to the Stipulation of Facts (R. 261-266.)

[105] Alexandria relies upon interstate commerce for its Maryland bounty business. Stipulation ¶6 (A. 76A). An indemnity agreement between Alexandria and a Maryland supplier is therefore enforceable as a contract in interstate commerce. *Allenberg Cotton Company, Inc. v. Pittman,* 419 U.S. 20 (1974).

[106] See discussion *supra,* at 80-82.

The final argument in support of the discriminatory classification is that it will effectively limit the money which Maryland must pay to non-taxpayers out of its "limited resources". This argument ignores the fact that bounties are paid out of a special earmarked account, the Abandoned Vehicles Fund, to be generated by a one dollar charge for the title of each motor vehicle titled in Maryland.[107] Alexandria's status as a Maryland taxpayer is irrelevant since no general tax revenues are used for the program. There is nothing in this record which in any way indicates that the Fund is in danger of becoming depleted. Of course, Maryland has the right to preserve the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures for the bounty program by reducing the bounty, by changing the eligibility standards, or by adopting any other non-discriminatory approach. If the State deems the program to be no longer in the public interest, it may abolish it in its entirety. What Maryland cannot do, however, is to engage in invidious discrimination by creating classifications which bear no rational relation to the legislative program. *Graham v. Richardson,* 403 U.S. 365, 374-75 (1971).

In addition, the argument ignores the realities of the market place. The discrimination achieves no savings. When a supplier obtains an abandoned vehicle eligible for bounty under Section 11-1002.2(f)(5), he will no longer deliver the vehicle to an out-of-state processor and thereby forego a bounty-enhanced price; rather, he will deliver the vehicle to a Maryland processor who can and will pay him the full bounty-enhanced price. The end result is the same: the bounty will be paid from the Abandoned Vehicles Fund and most of it will

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[107] The account is set up by Art. 66½, §3-830. See footnote 38 *supra,* at 24.

immediately be passed on to the supplier, whether he be from Maryland or out-of-state. Thus, this purported rationale merely focuses upon the invidious nature of Maryland's classification and does not rationally support any legitimate state purpose.

Appellants disregard the true nature and extent of the discrimination caused by the 1974 amendment to Section 11-1002.2(f)(5). That section, as amended, obviously deters Alexandria's regular Maryland sources of supply from bringing eligible vehicles from Maryland to its plant in Virginia — a result contrary to the stated legislative design of the bounty program. At the same time, the effect of the classification as drawn is to encourage both out-of-state and Maryland towing services to search the surrounding states for eight year old inoperable hulks titled in Maryland and to bring them into Maryland where the value of these hulks has been "artificially enhanced". This second effect is also out of phase with the legislative scheme. Thus the rationales advanced in support of discrimination are illusory and patently insubstantial grounds for inflicting economic hardships on licensed processors serving the Maryland market from out-of-state plants.[108]

The discrimination worked against Alexandria is much like that struck down in *WHYY, Inc. v. Borough of Glassboro*, 393 U.S. 117 (1968). That case involved the denial of non-profit tax status[109] solely because of

[108] This form of discrimination is similar to that which is based upon an unfounded hypothesis, e.g. that an old established business will retain certain characteristics which allow its exemption from regulation through a "grandfather" provision. *Morey v. Doud*, 354 U.S. 457, 467-68 (1957). See, *Dukes v. City of New Orleans*, 501 F.2d 706 (5th Cir. 1974), probable jurisdiction noted, 95 S. Ct. 1556 (No. 74-775), argued Nov. 11, 1975.

[109] The statutory program in our case, of course, is grounded upon state police power.

WHYY'S foreign incorporation. In its *per curiam* opinion, this Court found that the situation was not one where "the exemption was withheld by reason of the foreign corporation's failure or inability to benefit the State in the same measure as domestic non-profit corporations", and that the State had not "advanced any other distinction between [WHYY, Inc.] and domestic non-profit corporations which would justify the inequality of treatment". *Id*, 393 U.S. at 120. There was no suggestion that the State's burden of determining non-profit status within the State was more difficult in the case of a foreign corporation than in that of a domestic corporation. Therefore, this Court concluded that WHYY, Inc. "has not been 'accorded equal treatment, and inequality is not because of the slightest difference in [New Jersey's] relation to the decisive transaction, but solely because of the different residence of the owner'." 393 U.S. at 120. In the present situation, there has been no demonstration that Alexandria does not benefit that State to the same degree as local scrap processors or that there are any distinctions between Alexandria and the local scrap processors which would justify the inequality of treatment. Indeed, Maryland has even disclaimed any intimation that the 1974 amendment had anything to do with inspection of processors.[110] Just as the discrimination against WHYY, Inc. was based solely upon its foreign incorporation, Maryland's discrimination against Alexandria is based solely upon Alexandria's foreign location.

The suggestion by the Maryland Attorney General that Alexandria's proper redress is in the legislature rather than the courts "and the appropriate legislature in this case is that sitting in Richmond, Virginia" (Br.

[110] See discussion *supra*, at 89.

at 32) defies all reality.[111] Alexandria has been licensed by Maryland as a scrap processor and has become entitled to equal protection under Maryland laws insofar as its activities pursuant to such license are concerned.[112] Alexandria is entitled, by its licensure, to recover bounties on eligible vehicles to the same extent as local Maryland processors. If local processors can only claim bounties on eligible vehicles recovered in Maryland, then Alexandria claims entitlement to no more than that same right. Maryland is not excused by mere conjectures from its obligation to give equal protection within its own jurisdiction. "It is an obligation the burden of which cannot be cast by one State upon another, and no State can be excused from performance by what another State may do or fail to do". *Missouri v. Canada,* 305 U.S. 337, 350 (1938).

Although in some instances this Court may assume a reasonable set of facts upon which the legislature might have based its judgment (the so-called "presumption of constitutionality"),[113] that presumption loses much of its vigor when a statutory classification selects a closed class of businesses for special preference. *Morey v. Doud,* 354 U.S. 457, 467 (1957). The Maryland statute does not specify the one enterprise given legislative favor, but it does describe a closed group of nine readily-identifiable processors "physically located and operat-

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[111] There is no rational reason to expect that the Commonwealth of Virginia would have any proper interest whatsoever in setting up a bounty program to cover abandoned Maryland vehicles recovered in Maryland.

[112] See discussion *supra,* at 80-82.

[113] See *McGowan v. Maryland,* 366 U.S. 420 (1961) (court affirmatively identified a number of rational bases upon which legislature could have acted); *Lindsley v. Natural Carbonic Gas Co.,* 220 U.S. 61 (1911) (same).

ing" plants with her borders. Functionally these advantaged enterprises are similar to those in *Morey v. Doud* since the in-state scrap processors are dominated by one or two corporations.[114] As the District Court noted, "the cost of heavy equipment required to set up a scrap processing plant does have the practical effect of discouraging the entry of new competitors." Stipulation 10 (AJS. 22a). Section 11-1002.2(f)(5) effectively establishes a tightly-limited membership which stands to benefit economically from Alexandria's exclusion. Viewed from the perspective of those economically injured rather than of those economically benefited, the statutory restriction is primarily directed against a single processor and the "converse" situation mentioned in *Morey v. Doud,* 354 U.S. 457, 467 (1957) has been created. The limiting of the otherwise generic class flows from by the fact that all other licensed out-of-state processors are located in Pennsylvania and are said to utilize the Wreckers' Certificate procedure.[115] If Alexandria is the only licensed non-Maryland processor utilizing indemnity agreements, it alone has been harmed by the 1974 amendment. This statutory discrimination, caused by a statute that is directed against only one licensed company, contravenes the

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[114] It is not difficult to ascertain from the statistics who has benefited from the exclusion of out-of-state processors. Stipulation, Table VI (A. 72A) shows that the overwhelming bulk of the Maryland-located processing business is in the United Iron & Metal, Inc., and Brooklyn Salvage & Waste Co.

[115] The Appellants state that "[t]he Pennsylvania scrap processors participating in the Maryland program [use] Wreckers' Certificates instead of indemnity agreements." (Br. 7, n.13). This indicates that the Pennsylvania scrappers deal with licensed wreckers, rather than the unlicensed towing services which may not use Wreckers' Certificates. (Br. 6, n. .7).

Equal Protection Clause. *Cotting v. Kansas City Stock Yards Co.*, 183 U.S. 79, 114-15 (1901).

Under no standard previously articulated by this Court may the amendment to Section 11-1002.2(f)(5) withstand the Equal Protection Clause. Maryland has not justified the discrimination inherent in that amendment. Nor has it explained how its classifications have any fair or substantial relationship to the basic object of the legislation. Even the minimal standard "that a statutory classification bear some rational relationship to a legitimate state purpose," *Weber v. Aetna Casualty & Surety Company*, 406 U.S. 164, 172 (1972), has been dishonored. This Court may not uphold discriminations "supported by mere fanciful conjecture" and cannot let them "stand as reasonable if they offend the plain standards of common sense." *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison*, 301 U.S. 459, 462 (1937). The District Court, composed of three judges drawn from Maryland practice, found unanimously that even with "every factual inference in [Maryland's] favor, that statutory provision creates a classification which has no basis in reason." (AJS. 22a).

This case is not a situation of a out-of-state business seeking protections from the hazards of competition within; rather, Maryland is seeking to protect its local businesses from the hazards of competition from without.[116] The discriminatory amendment has, by purposeful and invidious classification, effectively excluded Alexandria from engaging in competition with

[116] "This is not a case in which the Fourteenth Amendment is being invoked to protect a business from the general hazards of competition. The hazards here have their roots in the statutory discrimination." *Morey v. Doud*, 354 U.S. 457, 468-69 (1957).

scrap processors who, except for location, are identically situated in all respects. Alexandria asks deliverance, not from the general hazards of the market place, but from the specific hazard created by an arbitrary and irrational statute.

III. A THREE-JUDGE FEDERAL COURT IS NOT REQUIRED TO HOLD A FULL-DRESS TRIAL ON THE MERITS BEFORE ENJOINING THE ENFORCEMENT OF AN UNCONSTITUTIONAL STATUTE WHERE, AS HERE, THE INVALIDITY IS APPARENT ON THE FACE OF THE STATUTE, THE MATERIAL FACTS ARE STIPULATED OR UNDISPUTED, THE POINTS OF ALLEGED DISPUTE ARE IMMATERIAL, AND ALL PARTIES ARE ADEQUATELY PREPARED FOR A PROMPT ADJUDICATION OF THE MERITS.

Appellants were fully accorded due process of law[117] when the three-judge District Court granted injunctive relief in compliance with Rule 56, Federal Rules of Civil Procedure, and in conformity with federal equity practice. Alexandria was entitled to a judgment as a matter of law because the 1974 amendment to Section 11-1002.2(f)(5) is inherently violative of both the Equal Protection Clause and the Commerce Clause. Alexandria demonstrated the absence of any genuine dispute as to any material fact through full factual documentation of its case. The allegedly disputed facts raised by Appellants in the Harris Affidavit (A. 84A), and those arguments raised for the first time on this direct appeal, are immaterial to the unconstitutionality of the 1974 amendment.

[117] Appellants speak of due process and invoke the Fourteenth Amendment (Br. 2), but not the Fifth. Certainly no State has deprived these Maryland officials of life, liberty or property, if in fact they are "persons" with standing to raise the due process issue.

A. Alexandria Has Shown the Absence of Any Genuine Dispute As to Any Material Fact

The principal evidence of the unconstitutionality of the 1974 amendment to the Maryland bounty law is the amendment itself. By its terms the amendment violates both the Equal Protection and Commerce Clauses. By documenting its case for enjoining the enforcement of that amendment through stipulated facts and an uncontroverted affidavit, Alexandria showed the absence of any genuine issue of material fact.[118] The District Court correctly granted summary judgment to Alexandria and properly ordered that enforcement of the 1974 amendment be enjoined (AJS. 31a). See *First National Bank v. Cities Service Co.*, 391 U.S. 253 (1968); *Doff v. Brunswick Corp.*, 372 F.2d 801 (9th Cir. 1966), *certiorari denied*, 389 U.S. 820 (1967).

Appellants now question whether Alexandria sufficiently documented its claim of damage caused by the 1974 amendment. Yet the record contains a detailed description of the drastic economic trade losses suffered by Alexandria, and the competitive advantages which were suddenly enjoyed by scrap processors with Maryland plants. Affidavit ¶12-15 (A. 73A). It is not disputed that Alexandria's inability to offer its unlicensed suppliers a bounty-enhanced price for hulks eligible for transfer by indemnity agreement caused deliveries of those vehicles to evaporate. Nor do Appellants anywhere dispute the reduction after the effective date of the 1974 amendment in the number of vehicles received by Alexandria from eight unlicensed Maryland towers. Affidavit ¶13 (A. 81A). Most notably, it is undisputed that the competitive effect of the 1974

[118] The District Court found the 1974 amendment to be unconstitutional by "[n]ot only the terms of the 1974 amendment but also the undisputed facts". (AJS. 29a).

amendment forced Alexandria's suppliers to turn to Maryland-located scrap processors in order to continue obtaining bounty rebates under the indemnity agreement transfer procedure. Affidavit ¶14-15 (A. 81A-82A). The Affidavit contains an abundance of uncontested, supporting evidence.[119] Appellants at no time attempted to rebut the inexorable conclusion: the 1974 amendment drastically impeded Alexandria's trade in hulks and substantially damaged its business while conferring reciprocal benefits upon Maryland scrap processors.[120]

The Affidavit, as well as the Stipulation, provides sufficient information as to the effect of the 1974 amendment upon commerce in hulks. Of course, Appellants had ample opportunity to supplement this information if they felt that more was necessary to aid the District Court in arriving at a proper determination. They elected not to do so, despite their statutory access to *all* of the records of *all* 16 scrap processors licensed and competing for hulks in the Maryland market. Appellants obviously cannot contest the stipulated facts. Nor did they choose to contradict Alexandria's sworn factual assertions regarding the dimensions of that commerce or its trade experience following the

[119] *See* Statement of the Case, *supra* at 35-38.

[120] The discriminatory terms of the 1974 amendment violate the Commerce Clause because they apply to a substantial amount of goods conceded to be in interstate commerce. Alexandria need not show actual damages in this analysis; threatened harm suffices. In *Pennsylvania v. West Virginia*, 262 U.S. 553 (1923), for example, this Court enjoined the enforcement of a West Virginia statute which would have diminished the natural gas supply available to Pennsylvania and Ohio. The suits were brought only a few days after the West Virginia statute became effective. In the present case the right to injunctive relief is even stronger, for Alexandria was not only threatened with irreparable injury, but was extensively harmed in fact.

amendment. The effect is that the uncontradicted statements contained in Alexandria's affidavit may be taken as true, regardless of Appellants' failure to stipulate to them. *First Nat. Bank v. Cities Service Co.*, 391 U.S. 253, 288-89 (1968). This truth survives on appeal, whether or not Appellants are presently unhappy with the undisputed facts contained in the record before this Court. These undisputed facts[121] raise an inescapable conclusion: Alexandria's trade in old cars is a substantial part of its interstate scrap metal trade,[122] and by discriminating against Alexandria and other non-Maryland scrap processors, the 1974 amendment substantially burdened interstate commerce.

Appellants have proffered no rebuttal evidence. The Harris Affidavit is especially barren of factual material, which confirms Appellants' inability or unwillingness to marshal any evidence which would produce a contrary result.[123] All of the facts bearing upon the material issues of this case were readily available to them. The Administration has statutory authority to inspect the records of Maryland-licensed scrap processors, and to require by regulation the reporting of

[121] *See* Statement of the Case, *supra* at 6-9.

[122] The District Court property found as a fact that Alexandria's trade in old Maryland cars was substantial: "Plaintiff herein has asserted, for example, that 40% of its total requirement for unprocessed scrap is satisfied by vehicles delivered from Maryland and that a substantial part of the plaintiff's dealings with old cars is derived from plaintiff's operations related to the Maryland statute. Defendants have not admitted those allegations but even so it is apparent that the movement of vehicles across state lines involving plaintiff is substantial". (AJS. 23a).

[123] Correspondence filed of record (A. 87A-91A) indicates the recognition by all concerned of the need for thorough and complete documentation.

information. Section 5-206 (A. 22A); M.A.R.R. § 11.02.05.43 (A. 35A). During this litigation, Alexandria twice invited Appellants to inspect its plant and examine its records.[124] Appellants have computers, inspectors and complete record-systems necessary to assemble data concerning the impact of the 1974 amendment and the pattern of interstate commerce in bounty-eligible hulks, but they chose not to do so. Their failure to take advantage of opportunities for discovery or to proffer evidence particularly within their control, or even to request additional time for doing so, precludes this Court from finding a genuine dispute where none presently exists on this record. See, e.g., *Robin Construction Co. v. United States,* 345 F.2d 610, 614 (3d Cir. 1965); *Schneider v. McKesson & Robbins, Inc.*, 254 F.2d 827, 830-31 (2d Cir. 1958). In their belated search for a genuine issue, Appellants bring nothing to surface which would require a full trial on the merits. *See,* e.g., *Kirk v. Home Indemnity Co.*, 431 F.2d 554, 560 (7th Cir. 1970); *Riedel v. Atlas Van Lines, Inc.*, 272 F.2d 901, 905 (8th Cir. 1959).

B. Appellants Mistakenly Allege the Existence Of Disputes On Immaterial Points.

The District Court ruled that there was no genuine dispute as to any material fact. This ruling followed a lengthy hearing in which the three judges repeatedly asked the Appellants to pinpoint material facts which they contended to be genuinely in dispute. Their inquiries and the responses thereto speak eloquently from the record (A. 95A-115A).

On appeal, Appellants assert the existence of disputes, but nowhere support their allegations with substantial and material facts of record that refute

[124] *See* letter dated January 16, 1975 (A. 88A-89A).

those presented by Alexandria. For example, the Harris Affidavit ¶5 alleges that indemnity agreements were filed which indicated the District of Columbia as the origin of certain Maryland-titled vehicles and that this alleged fact is "[c]ontrary to the assertion made by Mr. Isadore Gittleson in paragraph five of his Affidavit." Of course, there is no such contradiction. The Gittleson Affidavit does not deny that Alexandria submitted indemnity agreements on Maryland-titled cars recovered in the District of Columbia. However, such vehicles were and are eligible for bounties under the present legislation and regulations.[125] The Harris Affidavit is notably silent as to whether the Administration accepted or rejected the submitted indemnity agreements or otherwise questioned the validity of the submission. Alexandria's affidavit ¶5 simply provided the District Court with an explanation of the statistical tables contained therein.[126] The Harris Affidavit does not controvert it or raise any material fact sufficient to ward off summary judgment. *Griffin v. Griffin*, 327 U.S. 220, 235-36 (1946); *Mintz v. Mathers Fund, Inc.*, 463 F.2d 495, 498 (7th Cir. 1972).

Appellants also contend that the submission of 56 indemnity agreements for cars abandoned in the District of Columbia rebuts the District Court's finding that "defendants have not proffered a scintilla of factual support for their assumption that non-resident processors are more likely than in-state processors to claim bounties for vehicles abandoned outside of

[125] See the discussion *supra*, at 86-88.

[126] Gittelson Affidavit ¶5 was careful to prevent the very kind of statistical inaccuracy now asserted by Appellants. "In the case of the tower known to haul from two or more jurisdictions, only those indemnity agreements submitted by him which specified that the car came from Maryland were included in the count of Maryland cars." (A. 76A).

Maryland." (AJS. 20a). The fallacies in their contention are several. First, the statutory scheme does not limit bounty eligibility to hulks abandoned in Maryland. Therefore, the quoted "assumption" concerning non-resident processors is immaterial to this controversy. Even if the existence of 56 indemnity agreements was relevant to that assumption, it remains immaterial to the constitutional issue because the assumption is unfounded in law or fact.[127] And even if Appellants' assumption had any validity, the District Court was obviously correct in finding that there was not "a scintilla of factual support for their assumption" (AJS. 20a) that no Maryland processors acquire hulks abandoned outside Maryland.

There is a second fallacy in Appellants' argument. Even assuming *arguendo* that the purpose of the 1974 amendment[128] was to limit bounty payments to cars abandoned in Maryland, the amendment does not further this purpose.[129]

[127] *McGuire v. Columbia Broadcasting System, Inc.*, 399 F.2d 902 (9th Cir. 1968), identified the same error which Appellants make here. In response to a party's reliance on an immaterial theory to create a dispute of fact, the Court wrote: "[T]he showing of a 'genuine issue for trial' is predicated upon the existence of a legal theory which remains viable under the asserted version of the facts, and which would entitle the party opposing the motion (assuming his version to be true) to a judgment as a matter of law." *Id*, 905.

[128] Appellants' unsupported speculations concerning the legislative intent of the 1974 bounty law amendment also fail to create a genuine issue as to a material fact. *Chesapeake & O. Ry. v. International Harvester Co.*, 272 F.2d 139, 142 (7th Cir. 1959). The District Court was not bound by their declarations of purpose (AJS. 30a). In fact, Appellants disclaim any responsibility for the 1974 amendment or any knowledge as to its authorship (A. 97A-99A).

[129] See discussion *supra*, at 87-88.

Appellants' also allege that a factual dispute arises from a statement in the Harris affidavit ¶8 (A. 85A) that on two occasions prior to the 1974 amendment, Alexandria presented a claim for bounty payment for a hulk which another scrap processor had also certified as having been destroyed. (Br. 35). It is unclear from the affidavit whether Alexandria, or the anonymous scrap processor, or both, were mistaken in their claims or which one of them actually processed the hulk in question. In any event, the assertion is inmaterial, as the District Court observed during the hearing below (A. 107A). Two instances of mismatched vehicle identification number plates (VIN plates) do not affect the validity of Alexandria's statistics showing that the 1974 amendment "drastically altered the market in eight year old or older motor vehicles formerly titled in Maryland," Affidavit ¶12 (A. 80A), nor undermine the District Court's finding that Alexandria suffered a "discernible diminution" in business as a result (AJS. 30a). Moreover, if mismatched VIN plates posed a problem, Appellants do not indicate that Alexandria or any other scrap processor was to blame for it or that the two incidents cited in the Harris affidavit were anything more than isolated occurrences. Furthermore, if the problem violated any statute or regulation, it does not appear to have been of such magnitude as to cause the Administration to revoke licenses, mete out suspensions, or otherwise avail itself of existing enforcement machinery. Appellants cannot escape summary judgment and generate a full-dress trial on the merits by drawing their own unreasonable inferences from immaterial facts. *First Nat. Bank v. Cities Service Co.*, 391 U.S. 253, 288-90 (1968); *Tyler v. Vickery*, 517 F.2d 1089, 1094-95 (5th Cir. 1975).

No issues for trial were presented.[130] Appellants' failure in the District Court to proffer any factual support for their position, while sniping at peripheral details submitted by Alexandria, indicates a demonstrated lack of confidence in the statute which they champion on this appeal. All of the facts were readily available to them, but they apparently felt that Alexandria's showing was ample enough to relieve them of any obligation to come forward with additional materials. If they felt the record was inadequate or genuinely in dispute, it was incumbent upon them to so advise the District Court. Once confronted with a prima facie case, the burden of opposition rested upon *their* shoulders. *First Nat. Bank v. Cities Service Co.*, 391 U.S. 253, 288-90 (1968).

In sum, the decision below was entered on a well-documented record which established an adequate perspective for constitutional adjudication. By examining the record and interrogating counsel, the District Court penetrated all colorable disputes of fact and found that there were none sufficiently material to present a genuine issue for trial. Even so, the District Court adopted a cautious approach to the record and its opinion studiously avoided findings which might be deemed controversial, even though beyond dispute. The decision went against the Appellants, much to their present regret. However, their disappointment should be directed against the "in-the-halls" author of the 1974 amendment, not the party which challenged it or the federal judiciary which declared it to be invalid under two branches of the Constitution.

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[130] Even now, Appellants do not seek a remand for trial on the merits, but ask this Court to enter judgment on the merits in their favor (Br. 43). Their conclusion implicitly concedes that the case is ripe for final disposition on the constitutional issues, without need for further proceedings.

CONCLUSION

For the reasons stated herein, we respectfully submit that the judgment of the District Court should be affirmed.

Respectfully submitted,

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December, 1975

APPENDIX

In 1966, the United States Department of Commerce issued a comprehensive study of the scrap metal industry entitled *Iron and Steel Scrap Consumption Problems*. (March, 1966). That study was consulted by the Maryland Legislative Council Committee on Taxation and Fiscal Matters and mentioned in its 1967 Report (A. 41). Another authoritative study is a publication by the United States Bureau of Mines (U.S. Department of the Interior), *Automobile Disposal, A National Problem* [3]1967). Unfortunately, these studies have not been updated and some of their conclusions, now ten years old, may be obsolete or unreliable.

Because of the paucity of recently-published materials on the subject, an article which appeared in the August 1974 issue of FORTUNE was introduced in the record (R. 204). It is reprinted below in its entirety.

FOR SCRAPMEN,
THESE ARE
"TINSEL DAYS"

by Marilyn Wellemeyer

A few months ago, the police were summoned to the country estate of Lewis S. Rosenstiel, founder of Schenley Industries, to investigate a theft reported by the caretaker. But the thieves, it turned out, had not tried to break into any of the residences on the estate, which sprawls over 1,460 acres of New York and Connecticut farm and woodland. Instead, they had stripped copper gutters, downspouts, and flashing from some of the outbuildings, and made off with several hundred pounds of metal. It later developed that they had sold the stuff to scrap dealers for nearly a dollar a pound.

The crime was a sign of the times. Prices for all sorts of scrap began climbing swiftly in the early months of 1973, and in the spring of this year they reached

unimagined highs. In less than a year and a half, the most commonly traded grades of aluminum scrap climbed 145 percent, wastepaper 150 percent, copper 165 percent, and iron and steel 250 percent. The price rises, as might be expected, greatly helped profits in the scrap business. The earnings of several publicly owned scrap companies more than doubled last year. So far this year, a few companies have done even better than that.

The scrap boom has been no fun at all, though, for the industry's customers. The principal customers for scrap are steel mills, copper smelters, and other producers of primary metals and alloys. Last year, when the prices the mills could charge for their products were held down by government controls, the prices they paid for scrap were shooting upward (most scrap dealers were small enough to be exempted from controls). At times, the prices of top-grade copper and aluminum scrap rose above what the mills could charge for the primary metals they produced. And even at high prices, the mills had trouble getting all the scrap they wanted; dealers shipped lots of scrap abroad, where prices were higher still.

When price controls were relaxed, domestic buyers competed even more fiercely for scrap and bid up the prices further. Last spring, Armco, the largest buyer of steel scrap in the U.S., accused the scrapmen of "opportunistic pricing," but that had no discernible effect on the market. As one scrap dealer says: "This is an opportunistic business."

Scrapmen have to be opportunistic to survive. They are subject to even more violent ups and downs than the cyclical industries they depend on for a living. Normally purchased scrap contributes substantially to the content of many finished materials — it makes up about 40 percent of the copper produced in the U.S., 25 percent of the steel, and 20 percent of the aluminum and paper. But when demand for these basic commodities rises quickly, as it did last year, the producers use extra scrap as an incremental source of raw materials. When demand begins to slacken, they cut back on scrap and revert to their customary proportions of scrap and virgin materials.

Charles Merritt, president of Commercial Metals, a Dallas company that supplies ferrous scrap to a lot of steel mills, characterizes the business as "something of a feast or famine." The mills, he says, "either want scrap very badly or they don't want it at all. The price goes up and down like a window shade." This year has seen downs as well as ups. The price of copper scrap broke in May and by mid-July had fallen about 30 percent. Steel-scrap prices plunged precipitously in April, only to bounce right back up to near-record levels.

A striking label for these times in the scrap business comes from Carl Ablon, president of Luria Brothers, the nation's largest scrap company (and a subsidiary of Ogden Corp.). Ablon speaks of these as "tinsel days." Nice shiny profits can be made in times like these, but you can't assume they will last.

Scrap dealers long for stable markets, but recognize that they will probably have to go on living with instability. The industry is fragmented, with thousands of entrepreneurs ranging in size from scrap collectors who own a single truck to a few firms with sales exceeding $100 million. (Total scrap sales reached $8.7 billion in the U.S. last year, or somewhat more than the wholesale volume of household electrical appliances.) The scrapmen's customers are nearly always larger and more powerful then the scrapmen themselves.

Many of the scrap companies are family enterprises handed down from father to son. Nevertheless, capital requirements are low enough to let newcomers break into the market and add to the furious competition. Last year, William Henry Schwartz III, twenty-three, and eight other recent M.I.T. graduates raised $50,000 to start Aardvark International, Inc., which they named for the mascot of their college rugby team. Operating out of a trailer in Camden, New Jersey, they are dismantling destroyers and destroyer escorts and selling the steel plate and nonferrous metals as scrap. "Until I heard about it in a bar in Boston a year ago," Schwartz says, "I didn't even know that a shipbreaking industry existed."

In search of a name

Scrapmen are a proud bunch, and they bristle when the stuff they buy and sell is referred to as "junk." In recent years, indeed, many people in the industry came to regard the word "scrap" as offensive and opted for "secondary material." Lately, even that has come to seem a bit undignified. A trade group called the National Association of Secondary Material Industries has changed its name to the National Association of Recycling Industries.

The industry recognizes three main categories of scrap. In the lingo of the trade, they are called home scrap, prompt-industrial scrap, and obsolete scrap. Home scrap is produced in the mills of the basic industries — trimmings from steel ingots, slag and skimmings from molten metal, and the like. It is generally recycled on the spot. Prompt-industrial scrap is the stuff left over from manufacturing. It is "prompt" in the sense that manufacturers have to get rid of it promptly or be inundated.

Fisher Body plants are heavy producers of prompt industrial scrap. As towering presses stamp out side panels and doors, the steel trimmings fall down a chute onto a conveyor that carries them to a baler house. After bundling, the scrap is loaded on gondola cars and shipped to steel mills. Scrapmen also collect the skeletonlike aluminum sheets left after pieces have been stamped out, the paper trimmed off in the manufacture of envelopes, and the turnings and borings from machine shops.

The mills like prompt-industrial scrap because it is usually clean, of known composition, and chemically unchanged by use or exposure to the weather. But its availability varies with current industrial production, and it can't go far to satisfy incremental needs for scrap caused by a spurt in demand for basic materials. When demand surges, the mills have to increase their intake of obsolete scrap, such as discarded automobile hulks, appliances, plumbing fixtures, and industrial equipment.

Much of the obsolete scrap that dealers buy is brought to them by collectors who tend to slip in and out of the business. Coy Reid, thirty-one, a black man who owns a truck, rides around New York City picking up metal from buildings being torn down, old transmissions and engines from service stations, and whatever else he thinks he can sell. When prices were over $3 a hundredweight for mixed ferrous scrap last winter, Reid brought a load to the Bronx Iron & Metals Corp. three or four times a week. But the high prices soon drew more collectors, the yard dropped the price to $2.25, and Reid cut back to twice a week. "It's nothing but a gamble now," he says. "Too many people got trucks." When prices fall, Reid uses his truck to peddle fish or move furniture, or he goes to work for somebody else.

Old cars account for two-fifths of the ferrous obsolete scrap that reaches the market. In Dallas this spring, trucks loaded with auto hulks were lined up for five blocks outside a Commercial Metals yard waiting to drive over the scale. Commercial was paying $31 a ton for old cars at the time. When the price drops to $20 a ton, the line disappears. "And if you reduce the buying price for a car to much below that level," says Commercial's Charles Merritt, "you'll simply dry up the intake."

High prices for scrap encourage collecting from areas that wouldn't normally be scrap territory. Near Minot, North Dakota, a farmer who buys old tractors and implements from his neighbors accumulated 12,000 tons of scrap over the years. Minot is too remote to supply the market regularly, but when prices climbed last year, Luria sent a crew with cranes from Pueblo, Colorado, to prepare the stuff for shipment to a steel company in Saskatchewan. Some collectors, though, resist being drawn into the market even at high prices. "Shorty" Mayer, a retired auto wrecker north of Mansfield, Ohio, sits on a hoard of some 25,000 heaps. Because he considers the cars his nest egg, he refuses to sell more than a few at a time.

They can't stop buying

More than most businessmen, scrap dealers talk about their business in aphorisms, and one of the most frequently repeated runs: "Scrap is bought, not sold." Dealers tend to be fatalistic about what happens on the sales side. "If the mills don't need scrap," Merritt says, "there is no way you can sell it to them. When you can sell it, what you get is pretty close to the market price — and the market is established by other people. At the grass roots of this business, the difference between a good operator and a bad operator is a fellow who knows how to buy."

A dealer has more control over what he buys than over what he sells. He can turn off the flow of obsolete scrap from collectors by dropping the price. Still, he has only limited control over his purchases of prompt-industrial scrap. Jerome L. Klaff, president of H. Klaff & Co. of Baltimore, has eighteen trucks picking up stainless-steel and nickel-alloy scrap from fabricators. He processes and delivers it to the stainless-steel mills of Armco and Eastment, but when their purchases drop off he goes right on buying. He can't stop buying from the fabricators in bad times or they will sell their scrap to someone else when times are good. "The scrap dealer," says Klaff, "never stops buying."

A dealer has to keep his eyes open. Some collectors are inclined to "topdress" a load of obsolete scrap if they think they can get away with it. "In the course of a day," says a dealer in Brooklyn, New York, "we might buy five tons of dirt we didn't know about." An accurate sense of how much to pay is essential. Angelo Ponte, whose company operates ninety trucks that pick up wastepaper from New York City office buildings and department stores, pays Saks Fifth Avenue about $12 a ton for corrugated boxes and sells the material to paper mills for about $30 a ton. But Ponte *charges* the Empire State Building $7 a ton to carry off lower-grade wastepaper that is mixed with rubbish.

Hazards in Sunday supplements

To turn a profit, the dealer must not only buy scrap astutely, but also process it efficiently into forms that meet the mills' requirements. At the very least, dealers segregate conglomerations of miscellaneous scrap into many precise grades. There are twenty-seven grades of aluminum scrap, forty-four of copper and brass, forty-six of commonly traded wastepaper, and 105 of iron and steel. The specifications cover the chemical content as well as the size of the scrap. If a dealer's shipment does not meet the specs for the grade sold, the buyer is entitled to reject the shipment or reduce the price. In steelmaking, electric furnaces cannot consume ferrous scrap contaminated with large amounts of other metals. Newspaper Sunday supplements containing sample products — e.g., Handi-Wipes or foil-wrapped Alka Seltzer — have clogged drains and contaminated production in paper mills.

Copper refiners are extremely persnickety customers because the standards for their own products are so strict. Says Melvin Kriegel, vice president for purchasing in the cooper division of AMAX: "I have to impress upon new dealers the importance of properly segregating scrap. It takes very little of an impurity to downgrade No. 1 copper, because impurities are measured in parts per million." Primary aluminum producers usually mark their shipments with a "pedigree" indicating the alloy, and they try to buy aluminum of identifiable content when it becomes prompt-industrial scrap.

To identify the content of unmarked alloys, the processors of nonferrous scrap employ spectrographs, chemical analyses, and lots of experience. While magnetic devices can automatically separate ferrous scrap from other metals, one scrap dealer points out that "no machine can separate copper from brass and the different grades of brass. You have to look at it. Nobody has found a substitute for the sight of a human being."

In addition to sorting out the scrap, many dealers process it to increase its quality and ease of handling.

Over the past fifteen years or so, dealers have invested heavily in mechanical equipment. The smallest local dealers may still survive with a crane, a scale, and a few trucks. But a sophisticated yard, capable of handling and processing a large amount of ferrous scrap, might require an investment of $5 million or more.

A big yard may need a railroad siding, a magnet crane for ferrous scrap, forklifts for nonferrous scrap, and a shearing apparatus to cut up heavy material. The alligator shear, which has a stationary lower jaw and a swinging upper jaw, must be hand fed. It is gradually being supplanted by the mechanically fed guillotine shear, which may cost $1 million by the time it's installed. Balers and presses are needed to compact scrap to a density that is practical for shipping. Some yards have sweat furnaces to separate nonferrous metals with different melting points, and briquetters to convert turnings and borings to pellets of convenient size.

There are two principal ways of processing automobile hulks — with a baling press or a shredder. Modern baling presses are sometimes called Goldfinger machines, after the one that appeared in the James Bond movie of that name. In a matter of minutes, the machine can compress a car into a solid mass generally measuring 2 by 2 by 5 feet, which the industry calls a No. 2 bundle. A Goldfinger machine costs anywhere from $250,000 to $650,000.

Everything but the toot of the horn

A shredder costs even more, and does an even better job. Over the past decade, shredders have revolutionized auto processing, and there are now 140 of them around the country. The biggest ones can gobble up 1,000 cars a day. They rip the cars into small, easy-to-handle chunks that, unlike the scrap in No. 2 bundles, are largely free of paint, plastic, glass, or other foreign matter (which are reduced to dust and removed mainly by suction). Shredded ferrous scrap from automobiles brings much higher prices than bundled auto scrap —

recently, $145 a ton versus $56 a ton in Chicago. A big shredder costs anywhere from $2 million to $5 million, but even fairly small yards can get into the business by investing $750,000 in a model that chews up about 300 cars a day.

The first auto shredder was designed by Herman and Samuel Proler, who patented it in 1960. Their company, now called Proler International, has been among the most innovative of scrap processors. The present chairman, Israel Proler, one of nine children, had to quit school after the ninth grade and go to work collecting scrap for his father's City Junk Co. in Houston. In 1947, Israel and his brothers bought the largest baling press in the world from Ford's River Rouge plant (Ford first used it to prepare Model T trade-ins for melting in the company's own furnaces). The Prolerizer, which replaced the press, has turned the destruction of the automobile into an extremely efficient operation. According to Israel Proler, or Izzie as everybody calls him, "We get everything out of the auto but the toot of the horn."

The Prolerizer has caused Proler to adopt some business methods that are novel to the scrap industry. The voracious apparatus requires an assured supply of old cars and a ready outlet for the product it disgorges. As Proler expanded its operations beyond its home in Houston, the company entered into joint ventures with other scrap companies well entrenched in their own territories (the costs of shipping overland make scrap a regional business). Some of the partners — notably Schiavone-Bonomo in New Jersey and Hugo Neu in New York and Los Angeles — were well-established exporters, which helped give Proler access to expanding foreign markets. To get a more dependable supply of old cars than could be assured by the happenstance arrival of collectors, the partners have in some cases set up satellite yards to draw in heaps from remote areas. The partnership arrangement also helps to share the risks on what, for moderately sized companies, is a big investment.

The Prolerizer has proved extremely profitable, especially when the product is shipped into foreign markets. Last spring, the Japanese were paying $160 a ton for Prolerized ferrous scrap exported from Los Angeles. The old cars cost Proler and its partner, Hugo Neu, $60 a ton after being stripped of batteries, tires, and radiators (which are worth enough for auto wreckers to keep). The partners processed the cars for $32 a ton and shipped the scrap to Japan for $35, earning a gross profit of $33 a ton. Those profits have helped Izzie Proler keep a string of Thoroughbreds that race at Saratoga, Aqueduct, and the New Orleans Fair Grounds.

Dealers generally sell their ferrous scrap to brokers, who in turn sell to the consuming mills. Many of the large dealers also operate as brokers themselves. Most mills prefer to buy through brokers rather than maintain their own staffs of traders. For one thing, the brokers have access to more information about the market than the mills do. (Brokers can talk over scrap prices with several mills, but the antitrust laws prevent mill executives from discussing such matters among themselves.)

No business for the nervous

There is no central gathering place, such as a stock or commodity exchange, where scrap brokers meet to trade publicly at disclosed prices. Information on the prices of actual transactions spreads by word of mouth and is ferreted out by the trade press. Brokers keep in touch with what is going on mainly by telephone, talking with their customers and suppliers, evaluating the demand for scrap and the prices at which it can be obtained. In the words of David Joseph of Cincinnati, whose company ranks second to Luria in brokerage, "The broker *is* the market."

Scrap brokering involves continual risk taking. Unlike most stock and commodity-futures brokers, who earn a commission, scrap brokers make their money on their ability to buy low and sell high. Sometimes, to be sure, a broker acts as an agent, in which case he avoids

risk and receives a straight fee; but usually brokers take title to the scrap they buy for their customers. In many cases they have no order in hand when they buy. They canvass their customers' needs, but a customer may tell several brokers how much he wants and no particular broker is assured of the business. To come out ahead, a broker has to make a fairly accurate estimate of how much he can sell, so as not to overbuy or underbuy, and he has to gauge the direction of the market with some skill (or luck). If brokers think prices are going up, they try to be long — i.e., to buy scrap before they get an order. If they think the market will fall, they often sell short.

The most hectic time for a big ferrous-scrap broker comes toward the end of the month, when he bids for prompt-industrial scrap sold by the auto industry. The steel trimmings, compressed into what the trade calls No. 1 bundles, are the Tiffany item of the industry, and the prices paid for them affect the prices paid for other grades of scrap over much of the country. Occasionally, the bids of a single large buyer alter the course of the entire market. Acting as an agent for Armco, David Joseph bid high for industrial bundles at the end of May and helped drive prices up $15 a ton in some key markets. Buyers in the steel industry and some of Joseph's competitors grumbled that he had paid too much or, in the bidder's parlance, "left money on the table." Joseph acknowledges that those bids had "a dramatic effect on the market." But he argues that "Armco needed the bundles. A limited number were available, so we bid prices we thought would buy them."

The seller has thirty days to ship scrap to the customer, and if he's late, the buyer is entitled to cancel the order. Usually, if the prices have gone up, the buyer will require that the order still be filled. But if prices have gone down, the buyer will cancel, leaving the broker with no profit on the transaction.

While the scrap is in transit, the broker has a lot of money riding the rails. It is customary for him to pay the seller 75 percent of the price as soon as the scrap is

shipped and the rest once the buyer receives the scrap and verifies its weight and quality. Only then does the broker collect from the buyer. A big broker will buy and sell as much as $50 million worth of scrap a month, and financing that kind of volume can be costly.

Back when high-quality ferrous scrap was selling for $35 a ton two years ago, the broker used to get a gross margin of about $1 a ton. Now that margin might vary from $2 to $5. But not all of that goes into the broker's pocket. For one thing, his interest costs on financing the purchase of a ton of scrap have more than tripled over the past couple of years, to as much as $1.50 a ton.

Even the feds have it in for them

The scrapmen would like to see some changes in the business, particularly in their relations with customers. The customers, they feel, have forced them to bear a disproportionate share of the risks. As one scrapman puts it: "The steel industry can't live without us, yet they don't want to live with us."

The custom of doing most business on a thirty-day basis is a major peeve. Scrapmen complain that short-term orders give them little opportunity to line up supply and transportation and otherwise plan their operations. But the customers like the present arrangement because it shifts the risk onto the scrapmen. If the mills agreed to buy scrap steadily under long-term contracts, they could not as easily adjust their purchases to fluctuations in demand for their own products. Long-term deals would also reduce their freedom to stock up at a low price and stay out of the market when prices climb.

Scrapmen also feel that some long-standing government policies discriminate against them. For one thing, the U.S. tax laws tend to favor the use of virgin raw materials over scrap. The laws grant depletion allowances to companies that own mineral resources, and they allow capital-gains treatment for profits earned from the sale of forest products. Federal regulation also sets lower railroad rates on virgin materials than on scrap. Lately, the scrapmen have been worrying about what they see as a potential new attack on their business by government. Congress is considering bills

to subsidize waste-disposal plants that would recover metals from garbage, and some scrapmen fear that the recovered material could come onto the market at low prices and cut into their business.

In a time of extraordinary demand for their product, it would seem that the scrapmen would have some leverage to get what they want. Some have, in fact, made a number of sales contracts longer than thirty days. In Chicago, Proler and its partners sell shredded scrap to several steel companies on a sixty-day contract. Luria has some contracts for a year or more that pay costs plus a fee. Because large tonnages and great distances are involved, almost all foreign business is done on a ninety-day basis, and the Japanese have contracted for scrap as long as nine months in advance. But within the U.S., thirty-day terms remain the rule.

Eyeing the greener grass

Enamored of their customers' "easy life," some scrapmen have tried to reduce uncertainty by getting into their customers' businesses. Commercial Metals, for example, has acquired a copper-tube mill in Virginia and steel mini-mills in Texas and Arkansas that are captive customers for scrap. But some customers appear to be envious of the scrapmen, at least during these "tinsel days." Lukens Steel is thinking about getting into the scrap business, and CF&I Steel Corp. has brought shredders for its operations in Denver and Albuquerque. While prices are high, primary producers are also taking what steps they can to hold down their dependence on scrap. Bethlehem Steel recently cited high scrap prices as one reason for canceling plans for new installations that would have used a lot of scrap. And of thirty paper mills now planned for construction in the U.S.. only two will primarily process wastepaper.

All in all, then, uncertainty is a way of life for the scrapmen, and nothing in the offing seems likely to free them from the stresses and strains of the marketplace. As businessmen on the most volatile end of a bunch of cyclical industries, they are going to have to remain opportunistic for a long time to come.

(End)

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,

Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

APPELLANTS' REPLY BRIEF

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1607

HARRY R. HUGHES, SECRETARY OF TRANSPORTATION, STATE OF MARYLAND, ET AL.,

Appellants,

v.

ALEXANDRIA SCRAP CORPORATION,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

APPELLANTS' REPLY BRIEF

ARGUMENT

The Appellants submit this brief in reply to the Brief of Appellee filed by the Alexandria Scrap Corporation (Alexandria), in order to refute some of the more prominent misconceptions set forth in that document. What follows embellishes the Appellants' Brief, and reasserts, in light of the Appellee's Brief, four fundamental arguments. To wit, that Maryland Code (1957, 1970 Repl. Vol., 1975 Cum. Supp.) Art. 66½, §11-1002.2(f)(5), is constitutional, and:

I. Does not disturb the Commerce Clause because

A. the District Court incorrectly indulged Alexandria's irrelevant economic analysis as a

basis for determining the statute's effect upon interstate commerce and the Constitution; and,

B. the statute creates no impediment to the free flow of interstate commerce; and,

II. Does not work a violation of the Equal Protection Clause of the fourteenth amendment because

A. that provision is inapplicable to the case at bar; and,

B. assuming, *arguendo*, that the Clause were applicable, it would not be infringed, as the Maryland statute is a valid, rational manifestation of the State's police power.

I. *Commerce Clause*

A.

The Appellants have urged this Court that, as a matter of law, the Maryland statute which is the subject of this case does not offend the Commerce Clause, U.S. Const. Art. I, §8, cl. 3 (Appellants' Br. 16-24), asserting that the correct method of measuring the impact of a State statute on the Commerce Clause is to ascertain whether that statute places a substantial and undue burden on the totality of interstate commerce. In this case, one aspect, but only one aspect, of that measurement would be to ascertain the burden, if any, which the Maryland bounty scheme imposes upon Alexandria's interstate business. It was further advanced that the proper way to determine the statute's effect on this single aspect would be to compare Alexandria's pre-*program* predicament with its post-*amendment* situation. Appellants' Br. 22.

In its brief, Alexandria failed to address these crucial issues, and demonstrated only a superficial understanding of the Commerce Clause. Alexandria expended a good deal of energy to present a deluge of statistics and

projections in an attempt to show the dire effects which the 1974 amendment of Maryland's bounty statute had upon its financial position. Appellee's Br. 35-38. Even if these figures are in themselves accurate, they have no relevance with respect to the constitutionality *vel non* of the Maryland law.

By making comparisons between its bounty receipts at their height before the 1974 amendment, and their low point thereafter, Alexandria offers a series of large percentage declines in various aspects of its dealings. This approach suffers from multiple infirmities. By presenting figures representing bounty receipts during the program's salad days as a starting point, it inherently assumes that Alexandria was somehow constitutionally entitled to receive those payments, and that any curtailment of such payments would be constitutionally suspect, if not void. Certainly the Constitution does not guarantee any scrap processor anywhere the right to receive bounty payments for automobile hulks from State governments. Indeed, a casual reading of Alexandria's assertions could cause one to marvel at Alexandria's ability to remain financially solvent prior to the institution of Maryland's program! For example, Alexandria believes it "remarkable" that 37.7% of its entire production during the first six months of 1974 resulted from deliveries of vehicles by unlicensed suppliers (Appellee's Br. 18). This is anything but surprising when one realizes that Maryland does not license out-of-state auto wreckers. Because of its Virginia location it is only natural that Alexandria would deal with predominantly non-Maryland suppliers.

The Maryland law has not reduced the effectiveness of a means of transporting goods in interstate commerce. Even if, under a distorted, narrow view of the

case, it "burdens" a company which may engage in interstate trading. The statute does not burden interstate commerce. The effect of the law might be that the particular patterns of interstate dealing which Alexandria once utilized are no longer used, although the statute certainly poses no impediment to their employment. "This is because of the freely chosen geographical [location of Alexandria's processing facilities, and] not because of the requirements of [the Maryland law]. There is no impairment of the ultimate ability to transport in interstate commerce in the most efficient and economical manner possible," *Proctor & Gamble Co. v. City of Chicago,* 509 F.2d 69, 77 (7th Cir.), *cert. denied,* 95 S. Ct. 1980 (1975).

Alexandria's proffered analysis is meaningless because it completely ignores the pre-program business setting. Therefore, even by employing an inaccurate and improper model, Alexandria did not meet its burden of proof, and failed to demonstrate that Maryland's bounty program places a substantial, unconstitutional burden upon interstate commerce.

B.

Maryland's bounty program does not interfere unconstitutionally with the free movement of goods in interstate commerce. The possibility that the availability of a bounty on some abandoned hulks might affect some business decisions is only an incidental, tangential factor which does no violence to the Commerce Clause. Suppose that Virginia assesses a lower corporate tax than does Maryland.[1] Would Maryland corporations have a cognizable Commerce Clause claim

[1] This is a hypothetical example, although it might coincide with reality by happenstance, as no attempt has been made to determine the differences between the corporate tax structures of Maryland and Virginia.

against the Virginia tax law because Virginia allows its corporations to retain a greater portion of their annual earnings than its Maryland competitors are permitted to keep? Certainly if the Virginians were compelled to pay less tax they would have more money with which they could enter the interstate marketplace and outpurchase their Maryland competition. Just as certainly, such a situation, which exists throughout the United States, cannot be grounds for "relief" under the Commerce Clause. In the spirit of the case at bar, it is suggested that Maryland could preclude Alexandria's participation in the bounty program, by repealing the present law and enacting a scheme providing a tax credit for every properly processed hulk. Alexandria would be effectively deprived of any financial benefit because it does not pay any Maryland taxes. Such an arrangement would not be constitutionally infirm. The current direct bounty payments do not foster any illegal purpose, and there would be "no genuine nexus" between the tax credit and Congress's exclusive right to regulate interstate commerce. *Cf. Walz v. Tax Comm'n,* 397 U.S. 664, 675, 90 S. Ct. 1409, 1415 (1970).

Differences between the States have many tangential ramifications upon interstate commerce, are inherent in our federal system of government encompassing 50 sovereign States, and do not violate the Constitution. It is only when a State *prohibits* a form or facet of interstate commerce, by direct preclusion, or by placing such an exceptionally heavy burden thereon that an aspect of commerce cannot be conducted, that the Commerce Clause is abridged. *See* Appellants' Br. 18-21.

Most State activity which this Court has declared unconstitutional under the Commerce Clause has shared a common trait: it prohibited some aspect of

interstate commerce. Because these blockages where not alleviated by any corresponding State action, there existed an absolute impediment to some phase of commerce. Cases which fit this general description include, *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S. Ct. 844 (1970); *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 84 S. Ct. 378 (1964); *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 71 S. Ct. 295 (1951); *H.P. Hood & Sons, Inc. v. DuMond*, 336 U.S. 525, 69 S. Ct. 657 (1949); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 55 S. Ct. 497 (1935); *Foster-Fountain Packing Co. v. Haydel*, 278 U.S. 1, 49 S. Ct. 1 (1928); *Johnson v. Haydel*, 278 U.S. 16, 49 S. Ct. 6 (1928); *Pennsylvania v. West Virginia*, 262 U.S. 553, 43 S. Ct. 658 (1923); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824). In *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156 (1948), this Court was confronted with a slightly different situation where a State regulatory scheme, although it stopped short of prohibiting commerce outright, imposed such an inordinately heavy burden on interstate commerce that its direct effect was to substantially burden interstate trading. Consequently, the scheme was struck down as inimical to the Commerce Clause. Maryland's law neither directly prohibits any form of interstate commerce, nor does it place an extraordinary burden upon the conduct of such commerce.

Maryland's bounty program is significantly different from the situations presented in the cases just referred to. It does not prohibit any interstate (or intrastate) business. Any effect it might have upon interstate commerce is merely incidental, and it imposes no substantial burden on such commerce. Unlike the cases cited above, even if Maryland's law caused a blockage of some minute aspect of commerce, this would be more than offset by the fact that it promotes interstate

commerce in scrap metal, when that industry is examined as a whole. *See* Appellants' Br. 21, 38.

The Maryland bounty law does not impede the free flow of interstate commerce. It does not impinge upon Alexandria's right to buy, sell, or ship scrap metal in interstate commerce. *See Allenberg Cotton Co., Inc. v. Pittman*, 419 U.S. 20, 31, 95 S. Ct. 260, 266 (1974); *Shafer v. Farmers' Grain Co.*, 268 U.S. 189, 199, 45 S. Ct. 481, 485 (1925). Because it does not infringe upon Alexandria's privilege to engage in interstate commerce, Maryland's comprehensive regulation of scrap processors and wreckers does not work a violation of the Commerce Clause.

II. *Equal Protection Clause*

A.

The Appellants maintain that Alexandria is not entitled to the equal protection of Maryland's laws because it is not within Maryland's jurisdiction. U.S. Const. amend. XIV, §1. *See* Appellants' Br. 24-25. Alexandria seeks to avoid this bar to its equal protection claim by equating its Maryland scrap processor's license with registration as a foreign corporation doing business in Maryland and physical presence within Maryland. In each of the cases upon which Alexandria relies (Appellee's Br. 80), the corporations involved were registered to do business as foreign corporations in the State whose laws were being questioned, and were in fact physically present and doing business in that State. *See WHYY, Inc. v. Borough of Glassboro*, 393 U.S. 117, 89 S. Ct. 286 (1968); *Wheeling Steel Corp. v. Glander*, 337 U.S. 562, 69 S. Ct. 1291 (1949); *Hanover Fire Ins. Co. v. Harding*, 272 U.S. 494, 17 S. Ct. 179 (1926).

Alexandria's possession of a Maryland scrap processing license has no bearing upon whether Alexandria is within Maryland's jurisdiction for purposes of the Equal Protection Clause. By way of illustration, consider a doctor who, during the course of his career, has been licensed to practice medicine by several States. Although he may be licensed to practice in several jurisdictions, he is only "within those jurisdictions," in the fourteenth amendment sense, where he actually practices his profession.

The Appellants' assertion that Alexandria is not within Maryland for purposes of the fourteenth amendment rests upon a conglomeration of facts. Alexandria is a Virginia corporation,[2] maintains its scrap processing facilities in Alexandria, Virginia,[3] is not registered with the Maryland Department of Assessments and Taxation as a foreign corporation doing business in Maryland, does not, in fact, engage in any business in Maryland,[4] and pays no Maryland taxes. None of these factors are contradicted in Alexandria's brief. Whether or not any one of these factors standing alone would be enough to demand the conclusion, when this amalgam is considered, "it is safe to say" that Alexandria is not within Maryland for purposes of the fourteenth amendment. *See Blake v. McClung*, 172 U.S. 239, 261, 19 S. Ct. 165, 174 (1898); *see also Sully v. American Nat'l Bank*, 178 U.S. 289, 302-03, 20 S. Ct. 935, 940 (1900).

This result remains undisturbed in spite of the fact that Alexandria maintains a Silver Spring "office" which complies with Maryland's administrative regulations. Stipulation of Facts ¶8 (A. 58A). In fact this

[2] Stipulation of Facts ¶1 (A. 58A).

[3] Stipulation of Facts ¶4 (A. 58A).

[4] Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss 79 (R. 197).

"office" is nothing more than the private home of Alexandria's president, and has absolutely no connection with the Appellee as a corporate entity.

It is unfortunate that the District Court remarked in its opinion that Alexandria was "within reach of Maryland's 'long arm' statute," because it transacted "sufficient business in Maryland" to come within the ambit of Maryland Code (1974) §6-103(b)(1) of the Courts and Judicial Proceedings Article. *Alexandria Scrap Corp. v. Hughes*, 391 F. Supp. 46, 57 (D. Md. 1975) (AJS. 20a). Not only was this comment *obiter dictum* in the truest sense of that phrase, Black's Law Dictionary 1222 (rev. 4th ed. 1968), but the statement is inaccurate. That statute provides that "A court may exercise personal jurisdiction over a person, who directly or by an agent: (1) transacts any business or performs any character of work or service in the state." By its own admission, Alexandria does not conduct *any* business within Maryland. *See* Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss 79 (R. 197). Perhaps the District Court overlooked this item because the application of Maryland's "long arm" statute was not an issue in the case, and was not discussed at argument.

Even if Alexandria were subject to the personal jurisdiction of Maryland's courts this would not necessarily imply Alexandria's presence in Maryland for purposes of the fourteenth amendment. "Long arm" statutes speak of "jurisdiction" in a service of process sense. The "within its jurisdiction" language in the fourteenth amendment contemplates a geographic or territorial usage of "jurisdiction." This is the classic meaning of "jurisdiction," and was certainly the import ascribed to that word when the fourteenth amendment was ratified in 1868. *See Pennoyer v. Neff*, 95 U.S. 714

(1877), where references to service of process "jurisdiction" are repeatedly made in the traditional sense, connoting a territorial power basis of "jurisdiction." It was not until 1945 that "service of process jurisdiction" began to significantly diverge from the classic notion of "jurisdiction" as a result of *International Shoe Co. v. Washington,* 326 U.S. 310, 66 S.Ct. 154 (1945). "Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence *within the territorial jurisdiction of a court* was prerequisite to its rendition of a judgment personally binding him," *International Shoe Co. v. Washington, supra,* 326 U.S. at 316, 66 S. Ct. at 158 (emphasis supplied). As the 1945 *International Shoe* opinion reports, citing the 1877 *Pennoyer v. Neff* decision, the historic meaning of "jurisdiction" encompassed the concept of physical presence within a geographic territory. Indeed, this was its very essence. It is this denotation which must be attributed to "within its jurisdiction" as that phrase is employed in the fourteenth amendment, which was proposed in 1866, and finally adopted in 1868.[5]

B.

The Maryland bounty scheme would also pass constitutional muster under the typical equal protection standards. *See* Appellants' Br. 25-33. Alexandria seeks to demonstrate, by what amounts to a substantive due process argument, that the law violates the Equal Protection Clause. In its brief Alexandria asserts that

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[5] *See* South Carolina v. United States, 199 U.S. 437, 448, 26 S. Ct. 110, 111 (1905), where Mr. Justice Brewer wrote for this Court:

> The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted, it means now.

the justifications advanced by the Appellants in support of the distinctions drawn in the Maryland law are "untenable," Appellee's Br. 85. The Appellants argue that by not allowing non-Maryland scrappers to receive bounty payments by acquiring autos by means of indemnity agreements at least four rational purposes are achieved (Appellants' Br. 29): 1. It tends to insure that bounty recipients are amenable to judicial process in Maryland; 2. It insures that the indemnity agreement is enforceable; 3. It tends to insure that bounty payments will only be made on autos abandoned in Maryland; and, 4. It tends to limit the amount of money which the State obligates itself to pay out of its limited resources to non-taxpayers.

Alexandria feigns particular outrage at the rationality of Maryland's interest in limiting the payment of bounties to vehicles abandoned in Maryland, and insuring the integrity of indemnity agreements. Appellee's Br. 85-86. Indemnity agreements are not always enforceable under the law of many States, as they can be deemed to violate public policy. *See generally* 42 C.J.S. *Indemnity* §7, at 573 (1944). This is important because their enforceability depends upon the law of the State where they are to be performed. *See, e.g., Gorsalitz v. Olin Mathieson Chem. Corp.,* 429 F.2d 1033, 1048 (5th Cir. 1970). Maryland has absolutely no control over the laws of her sister States, and therefore cannot be expected to accept non-Maryland indemnity agreements which might be void or voidable. Although Alexandria opines that the proposition is "wholly incomprehensible," Appellee's Br. 89, Maryland's refusal to accept these agreements makes eminent good sense, and cannot be deemed purely irrational.

Alexandria assails the reasonableness of wanting to confine the payment of bounties to cars abandoned in

Maryland by terming such a rationale "untenable" and "perfectly ridiculous," Appellee's Br. 85, 87. Yet within only a few pages of this obloquy, Alexandria's deductive prowess improves markedly. In response to the Appellants' suggestion that the relief Alexandria seeks lies with the Virginia legislature, Appellants' Br. 32-33, Alexandria retorts (Appellee's Br. 94 n.111): "There is no rational reason to expect that the Commonwealth of Virginia would have any proper interest whatsoever in setting up a bounty program to cover abandoned Maryland vehicles recovered in Maryland"![6] This is precisely the Appellants' point. Maryland has absolutely no interest in encouraging the removal of abandoned Virginia vehicles recovered in Virginia or the District of Columbia.

This is *not* an attempt to defend any illegal action by raising another State's failure to act as a defense. Such reasoning was rightfully rejected by this Court in *Missouri v. Canada,* 305 U.S. 337, 350, 59 S. Ct. 232, 236-37 (1938). Rather, it merely is a recognition of the fact that it is entirely reasonable and proper for a State to exercise its police power in an attempt to purge itself of unsightly autos. It is equally as constitutional for a State to decide, as Virginia apparently has, that such an exercise is unwarranted.

The justifications offered in support of the Maryland law are realistically sound. However, even if they were

[6] Although this statement is accurate, it is a spurious response to the Appellants' assertion that Alexandria should properly pursue relief with the Virginia legislature. The thrust of the suggestion obviously implies that Virginia could establish a program designed to rid herself of abandoned vehicles much in the same way that Maryland has. The Appellee recognized that this was the true meaning, Appellee's Br. 69, but later chose to conveniently ignore its earlier observation, Appellee's Br. 93-94.

only logical abstractions, that would satisfy the Equal Protection Clause. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it," *McGowan v. Maryland,* 336 U.S. 420, 426, 81 S. Ct. 1101, 1105 (1961); *Dandridge v. Williams,* 397 U.S. 471, 485, 90 S. Ct. 1153, 1161 (1970).

The desperation felt by Alexandria in its attempt to buttress a feeble equal protection argument may be measured by the reliance placed upon *Hartford Steam Boiler Inspection & Ins. Co. v. Harrison,* 301 U.S. 459, 57 S. Ct. 838 (1937). That case is readily distinguishable from that now under review because there the foreign corporation was physically present, through an agent, in the State whose statute was being challenged. However, what is most curious about *Hartford Steam Boiler* is the fact that in over 38 years since it was decided this Court has never discussed it. That 5-4 decision has only been cited twice by this Court, and then as one of a string of citations, *McLaughlin v. Florida,* 379 U.S. 184, 191, 85 S. Ct. 283, 288 (1964); *Morey v. Doud,* 354 U.S. 457, 464, 77 S. Ct. 1344, 1349 (1957). Since its original issuance in 1937, it has never been recognized to support the kind of substantive due process argument for which Alexandria cites it five times. On the solitary occasion in the United States Reports where *Hartford Steam Boiler* is discussed, it was severely criticized, *Morey v. Doud, supra,* 354 U.S. at 473, 77 S. Ct. at 1354 (Frankfurter, J., dissenting). As a "derelict in the stream of law," *Hartford Steam Boiler* would appear, in the proper case, to be a candidate ripe for overruling, and share the fate that *Liggett Co. v. Baldridge,* 278 U.S. 105, 49 S. Ct. 57 (1928), suffered in *North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc.,* 414 U.S. 156, 167, 94 S. Ct. 407, 414 (1973).

Alexandria also seeks to place great emphasis upon this Court's decision in *WHYY, Inc. v. Borough of Glassboro,* 393 U.S. 117, 89 S. Ct. 286 (1968). The discriminations present in that case were declared violative of the Equal Protection Clause for the same reasons that Alexandria's claim cannot succeed. In *WHYY* the Pennsylvania corporation complaining of unconstitutional treatment under New Jersey's tax laws was registered and qualified to do business in New Jersey, and was physically present and doing business in that State. As a result of its being within New Jersey's jurisdiction, it was entitled to the equal protection of New Jersey's laws. Alexandria is neither registered to do business in Maryland, nor is it actually present within the State's jurisdiction.

Throughout its brief Alexandria tries to create the mistaken impression that Maryland instituted its bounty program with the intent of filling the coffers of its in-state scrap processors so that they might force their non-Maryland competitors out of business. It must not be forgotten that the payment of bounties in certain instances is only one part of a comprehensive scheme that, for reasons of environmental health, was "designed to arrest the increasing accumulation of automobile hulks, and to promote their recycling," *Administrator v. Vogt,* 267 Md. 660, 675, 299 A.2d 1, 9 (1973); Appellants' Br. 4, 12-14. In pursuance of this goal, the Maryland Legislature promulgated a "carrot and stick" program.

The payment of bounties constitutes the "carrot" aspect of the scheme. The "stick" portions of the program, from which non-Marylanders are effectively immune, demonstrate the legitimacy of this approach. *See* Appellants' Br. 14, 31. That Maryland has established something distinct from a bare giveaway

program is readily apparent. The scrap processors license is not a ticket to untold wealth. Maryland scrap processors and auto wreckers *must* obtain licenses lest they incur criminal penalties, Maryland Code (1957, 1970 Repl. Vol.) Art. 66½, §§5-201, 5-210. Although non-Maryland scrappers *may* be licensed by virtue of Md. Agency Rules & Regs. §11.02.05.45, there exists no corresponding provision by which non-Maryland wreckers can be licensed. If Maryland's licensing of out-of-state scrap processors was meant primarily to promote interstate commerce, Appellee's Br. 54, then why do the Appellants refuse to license non-Maryland wreckers? The simple answer is that the program was intended to forward a legitimate State interest, and any effects that it might have upon interstate commerce, even if favorable, are only incidental.

Alexandria's protestations to the contrary notwithstanding (Appellee's Br. 54-55, 60), the Maryland law does not insulate Maryland scrap processors from outside competition. While the preamble to House Bill 782, Laws of 1974, ch. 465 (A. 15A), recites that its purpose is to protect certain scrap processors by authorizing them to file indemnity agreements, it manifestly does not import economic protection from the hazards of the marketplace. Upon the execution of an indemnity agreement, the person delivering an inoperable eight year old vehicle to a scrap processor indemnifies the scrapper from all claims which might be lodged against him upon his destruction of the vehicle. Appellants' Br. 7 n.12. This is the sort of "protection" which an indemnity agreement affords a scrap processor. As has been discussed previously, only "certain" scrap processors may obtain bounties through the execution of these agreements, because Maryland can only be confident that agreements to indemnify

Maryland based scrap processors will be judicially enforceable.[7]

The fact that a non-Maryland scrap processor is less likely than his Maryland counterpart to obtain hulks from licensed Maryland wreckers, and as a result collect fewer bounties, is just a business consideration which the non-Marylander must take into account before deciding to seek a Maryland scrap processors license. Unlike the *Toomer v. Witsell, supra,* situation, the token licensing fee is the same for all applicants regardless of location. The freedom to choose between seeking a Maryland license and not is a luxury which only non-Maryland scrap processors enjoy. Maryland scrappers are required to be licensed.

[7] Of course, this inherently presupposes the reasonable expectation that agreements to indemnify Maryland scrap processors will be performed in Maryland, and therefore be enforceable under Maryland law. *See* page 11 *supra.*

CONCLUSION

The Maryland regulatory scheme is rationally based and free from invidious discrimination. As a valid exercise of the police power it does not do violence to the Equal Protection Clause. Unlike some otherwise permissible measures enacted pursuant to a State's police power, *see, e.g., Bibb v. Navajo Freight Lines, Inc.,* 359 U.S. 520, 79 S. Ct. 962 (1959); *Dean Milk Co. v. City of Madison,* 340 U.S. 349, 71 S. Ct. 295 (1951); *Southern Pacific Co. v. Arizona,* 325 U.S. 761, 65 S. Ct. 1515 (1945), Maryland's program does not impose an undue burden on interstate commerce.

For all of the reasons expressed above, and in the Brief for Appellants, the decision of the District Court must be reversed, and judgment entered for the Appellants.

Respectfully submitted,

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